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THE CASUIST

A Collection of Cases in Moral and Pastoral Theology

New Edition revised in accordance with the Code of Canon Law

BY

REV. STANISLAUS WOYWOD, O.F.M.

Volume I.

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PREFACE.

THE present work consists chiefly of Cases of Conscience that appeared in THE HOMILETIC MONTHLY (now THE HOMILETIC AND PASTORAL REVIEW). It was issued originally in answer to the request of some of the subscribers to this magazine, who expressed their desire to possess these Cases in such form as to be easily accessible when reference to them was necessitated by the exigencies of daily missionary life.

Many persons, too, were unable to secure copies of THE HOMILETIC MONTHLY containing these Cases, as the earlier volumes were soon out of print. Hence it was confidently believed that the work would be welcomed by the friends and readers of THE HOMILETIC MONTHLY, and by priests on the mission in general. Experience has shown that this was so.

The Cases are plain and practical, such as come into the sphere of activity of the priest whose duty brings him into intimate relations with souls, either as confessor, or adviser, or friend. In fact, many of the Cases presented are original, and were sent to the editor for solution by busy or perplexed missionaries. Others, taken from various periodicals, were chosen for their practical value, and to such Cases the author's name is appended.

Owing to the promulgation of the new Code of Canon Law, it has been necessary to revise the work. This has been done carefully in the present volume by Father Stanislaus Woywod, O.F.M., LL.B., author of *The New Canon Law,* whose canonical articles are so well-known to readers of THE HOMILETIC AND PASTORAL REVIEW.

CONTENTS.

		PAGE
I.	Necessity of General Confession for a Convert Rebaptized *Sub Conditione*	7
II.	Churching of Women after Illegitimate Childbirth	11
III.	Low Mass on Holy Thursday	17
IV.	Legalization of an Illicit Union	22
V.	Saying Mass in Fermented Bread	26
VI.	Defrauding an Insurance Company: A Case of Restitution	31
VII.	Absolution from Censures Reserved by the Bishop	36
VIII.	Clerical Censure	44
IX.	Age at which Children Become Subject to the Laws of the Church	49
X.	Mixed Marriage before a Protestant Minister	51
XI.	Hysterical Scrupulousness of a Nun	57
XII.	The Adjusting of Mass Stipends	63
XIII.	The Conferring of a Dispensation and the Seal of Confession	65
XIV.	Commutation of the Simple Vows of Celibacy	67
XV.	Defraudation by a Bank Employee: A Case of Restitution	71
XVI.	A Case of Confession	73
XVII.	Requiem Masses with the Blessed Sacrament Exposed	75
XVIII.	Means by Which to Induce Those Seriously Sick to Receive the Sacraments	77
XIX.	The Marriage Tie	79
XX.	Forbidden Books	83
XXI.	A Promise a Binding Contract?	86
XXII.	For What Persons May the Holy Sacrifice of Mass Be Offered?	88
XXIII.	The Words of Consecration	92
XXIV.	Confession by Telephone?	94
XXV.	May Mixed Marriage Ever Be Advised?	100
XXVI.	Inquiring in Confession for the Name of an Accomplice	103
XXVII.	A Case of Restitution	108
XXVIII.	The Pauline Privilege	111
XXIX.	May a Person Be Dispensed from Hearing Mass on Sundays if Going to Mass Becomes a Proximate Occasion of Sin?	118
XXX.	Concerning the Perusal of Private Revelations	123
XXXI.	Dispensation from *Impedimentum Impediens* Arising from Betrothal	128
XXXII.	Doubtful Consecration and Its Consequences	131
XXXIII.	Dispositions Required for Saying Mass	135
XXXIV.	Affinity and Unbelievers	139
XXXV.	May a Catholic Girl Act as Bridesmaid at a Non-Catholic Marriage?	145
XXXVI.	Where Should a New-Born Child Be Baptized?	151

		PAGE
XXXVII.	A Recent Papal Dispensation *"Super Matrimonio Rato et Non Consummato"*	155
XXXVIII.	Are Baptized Non-Catholics Bound by the Laws of the Church?	160
XXXIX.	A Mixed Marriage in a Town Where the *"Tametsi"* Is in Force	165
XL.	A Case of Restitution	171
XLI.	Interpellation in the *Casus Apostoli*	177
XLII.	*De Dispensatione ab Impedimento Mixtae Religionis*	180
XLIII.	Sudden Sick Calls	184
XLIV.	Confession of a Dying Person	189
XLV.	Marks of Friendship toward an Enemy	193
XLVI.	The Obligation of Restitution, Arising from Concealing the Real Value of an Object and Thereby Depreciating Its Price	198
XLVII.	Restitution to a Railroad Company	202
XLVIII.	Fraternal Correction	208
XLIX.	A Pastor's Watchfulness over His People	213
L.	The Medical Secret	219
LI.	Responsibility for Mass Stipends	228
LII.	A Son's Duty toward His Father	233
LIII.	Appropriating Another's Ideas	237
LIV.	How Small Thefts Become Grave	240
LV.	Godparents in Baptism	243
LVI.	Right of a Bishop to Suspend a Priest without Trial	248
LVII.	The Use of Morphine	255
LVIII.	The Vow to Enter an Order	257
LIX.	Restitution on Account of Incendiarism	261
LX.	In Rebuilding a Parish Church, May the Name Be Changed?	265
LXI.	Marriage Dispensation in a Case of Temporary Vows	268
LXII.	*Interruptio Missae* for an Urgent Sick Call	270
LXIII.	A Case of Restitution	272
LXIV.	Lay Confraternities Forbidden in Convent Chapels	274
LXV.	*Casus Matrimonialis Perplexus*	277
LXVI.	Two Consecration Cases	279
LXVII.	Marriage by Priest without Banns and Confession	290
LXVIII.	The Near Occasion with Relation to Company-keeping	292
LXIX.	Absolution of a Mason from Excommunication	303
LXX.	Coöperation in False Worship	307
LXXI.	An Invalid Absolution	311
LXXII.	*Impeditio Prolis*	316
LXXIII.	A Sick Person Converted Through Hypnotic Suggestion	320
LXXIV.	An Explanation of the Words: *"Nemo in Utero Matris Clausus Baptizari Debet"*	331

THE CASUIST.

New Casus Conscientiae of General Import, Discussed and Solved.

I. NECESSITY OF GENERAL CONFESSION FOR A CONVERT REBAPTIZED SUB CONDITIONE.

Mr. N., a convert to the Catholic faith, was baptized, as a child, in the Lutheran Church. He is now 50 years of age. There exists reasonable doubt as to the validity of his baptism received in the Lutheran Church, and for this reason he is rebaptized, conditionally, on his reception into the Catholic Church. But now there arises this question: Must Mr. N. make a full confession of all the mortal sins he may have committed, since his baptism as a Lutheran? Or may he be excused from making a full confession, because since his first baptism is *doubtful,* the sins committed after it are *materia dubia* for confession, and therefore need not necessarily be confessed. Would it not be sufficient for Mr. N. to confess a few sins, after his baptism as a Catholic, and thus receive a valid absolution, *indirect* for all his sins committed since his first baptism? It will be a great hardship for Mr. N. to repeat the sins of half a century, and it seems unreasonable to subject him to this hardship, since he has only *doubtfully* contracted, in his first baptism, the obligation of confessing his sins. Moreover, Ballerini and other authors assert

that it is not of strict necessity that converts should make a complete confession of their lives. Therefore we ask, may Mr. N. be excused, under the circumstances, from making a full confession of his whole life?

Answer.—Mr. N. will have to make a full confession of all his sins from the day of his baptism in the Lutheran Church. This may appear a hardship, nevertheless it is so ordained by the second and third plenary councils of Baltimore, and by repeated declarations of the Holy See.

Lehmkuhl treats of this matter at some length, and maintains that after the recent decisions of the Holy See, concerning this matter, there can remain no doubt about it. Many theologians were inclined to exempt converts from this obligation, when they were rebaptized *sub conditione,* on entering the Catholic Church, because since the validity of their Catholic baptism was doubtful, it remained also doubtful whether the sins committed before it were really remitted by sacramental absolution, or by the Catholic baptism. Hence these theologians thought that to such converts, if they confessed matter sufficient for absolution, although they made no general confession of their lives, absolution might be given conditionally, and that thus all their sins would be remitted indirectly, provided their first baptism in Protestantism was valid. And thus they tried to save the convert from the hardship of a life-confession on his entering the true Church.

But against all this reasoning of the theologians (cf. Ball. ad Gury, tom. II, 231, n. 4), the Holy See has expressly declared that converts who receive conditional baptism must confess all the mortal sins of their past lives, *quoad speciem et numerum,* and be absolved from them conditionally. The Holy See gave this decision in 1715,

in the well known case of Charles Wippermann. And again, in 1868, when the bishops of England, through Cardinal Manning, asked the Holy See for a ruling on the question. The case of Charles Wippermann, of course, was a particular case laid before the Holy Office. But the intention of the Holy Office, in deciding it, was to pass a sentence and to give a decision, which might apply to all cases coming under this head, and which might be regarded in the future as the law on this matter; for the decree must be regarded as an authentic interpretation of the divine law by the Holy See, and not merely as a local law or as a disciplinary measure of the Church. The Church will not, and can not, prescribe anything as necessary matter for confession which is not so by divine law. In accordance therefore with the divine law, sins committed after a doubtfully valid baptism must be submitted to the power of the keys in the tribunal of Penance. This we learn from the positive declaration of the Church. Reason, likewise, confirms it. For, though one who is doubtfully baptized has not a certainty, but only a probability of receiving sacramental absolution of his sins, it does not follow that the obligation *to confess* them is only probable, and may be disregarded; for the duty of confessing and performing the penance received is for all more certain than that probability of receiving the effects of the Sacrament. Whether the penitent receives the sacramental effects of the absolution depends on the validity of his first baptism, so that doubt may be always entertained about it.

But the duty of confessing and doing the penance admits of no such doubt, since it is based upon grounds morally certain and sufficiently evident. If this were not so there would be an end of all human obligations. By baptism men come under the jurisdiction of the Church. This is the external rite by which men are admitted

as members. But no one doubts that a man remains subject to the jurisdiction of a social body, into which he has been admitted by the acknowledged external rites, till that reception is proved to be invalid. All, therefore, who have been baptized, and who were desirous of receiving baptism validly, though there exist doubt about the validity, are subject to the jurisdiction of the Church and to her laws, and are bound to comply with the divine command of confessing their sins. In other words, the doubt about the baptism has this effect, that the baptism may be regarded as invalid in the sense that it ought to be repeated conditionally, lest the man risk his eternal salvation; but not in the sense that a doubtfully valid baptism impairs or wipes out all a man's obligations toward the laws and regulations of the Church, among which is the precept of confessing all one's mortal sins committed after baptism. (cf. Schieler, Theory and Practice of the Confessional, p. 190.)

II. CHURCHING OF WOMEN AFTER ILLEGITIMATE CHILDBIRTH.

Bertha, an unmarried young woman, gives birth to an illegitimate child. Some months after its birth she brings it to the parish church to have it baptized. After its Baptism she requests the parish priest to church her. But he, already sorely troubled by the scandal the girl has brought on the parish, indignantly refuses to church her. In fact, he tells her the Church refuses to bless a woman after an illegitimate birth, that the churching of women is intended solely for decent legitimate mothers, and that to church her would be to transgress the command of Our Lord, about throwing pearls before swine. Some days afterwards, however, he began to think that perhaps he had been too severe, that perhaps he ought to have churched the unfortunate woman, that scolding her now could do no good, since the evil was done, and a bitter price already paid, and the unhappy girl was not likely to repeat her experience. He now asks whether he ought to have churched the woman, since she desired to be churched; or was it lawful for him to have refused her? Had she a strict *right* to the blessing, or was it within his discretion whether he would church her or not, or would it have been unlawful to church her?

Answer. The Roman Ritual has nothing to say regarding the churching of women after an illegitimate birth. There are three decrees of the Congregation of Rites concerning the churching of women after a *legitimate* birth, in Gardellini's collection. In 1631, the Congregation of Rites answered: "*quo vero ad benedictionem mulierum post partum, hoc esse munus parochiale, et ad ipsum parochum spectare.*" Again, when it was urged, in the same year, that

the churching of women was not *de praecepto,* but only *ad bene esse,* and therefore might be performed by any priest, the Congregation of Rites answered that the churching of women belonged to the rights of the parish priest, *exclusively.* The same answer was given again in 1703.

Since the Roman Ritual says nothing about the churching of women who have given birth to illegitimate offspring, and since nothing can be found in the decrees of the Roman Congregations concerning the same, we will consider the origin and nature of the ceremony of blessing women after childbirth. The rite has its origin in the prescription of the Old Law, concerning the purification of women after childbirth.

In the book of Leviticus, ch. 12, we read: *"Neither shall she* (a woman after childbirth) *enter into the sanctuary until the days of her purification be fulfilled. . . . And when the days of her purification are expired, for a son or for a daughter, she shall bring to the door of the tabernacle of the testimony, a lamb of a year old for a holocaust, and a young pigeon or a turtle, for sin, and shall deliver them to the priest; who shall offer them before the Lord, and shall pray for her."*

"It is evident from the words of the law," says O'Kane (Rubrics, ch. x.) *"that it could not apply to the Blessed Virgin in whom there were none of the effects of ordinary childbirth, since not only in conceiving, but in giving birth to the divine Infant, she still remained a pure and perfect virgin. Yet we know from St. Luke that she did not avail herself of the exemption, but humbly complied with the requirements of the law. A desire of imitating the humility of the Blessed Virgin, induced the custom among Christian mothers of abstaining from entering the church for some time after childbirth. They then asked the blessing of the priest at the church door, and*

made their first visit one of thanksgiving to God for their safe delivery."

The Jewish rite was intended only for legitimate wives and mothers, united in lawful wedlock. From which we infer that it was the intention of the Church, from the beginning, to confer this rite only on lawfully married women, after legitimate childbirth. Moreover, if we consider where this blessing occurs in the Roman Ritual, namely, immediately after the Sacrament of Marriage, as if pertaining to the same matter, and not among the other blessings of the Ritual, we seem to gather that it was intended by the Church only for women who have given birth to legitimate children in lawful wedlock.

Wherefore Catalanus, in his Commentary on the Roman Ritual, de bened. mulier. n. 17, says:

"Reliquum est, ut ad calcem hujus commentarii circa puerperas purificandas, et istud notemus, benedictionem post partum ei tantum mulieri concedi, quae ex matrimonio pepererit, non autem illi quae ex fornicatione, et potissimum ex adulterio, aut damnato alias coitu parturiit. Ita plane docent communiter doctores, et statutum etiam in synodis ac Ritualibus legi."

Baruffaldi, commenting on the Roman Ritual, is of the same opinion (ad Rit. Rom. comm. de bened. mulier. tit. 43, n. 18).

De Herdt also, in his work on the Liturgy, arrives at the same conclusion. He says: "Only those women who bring forth children in lawful wedlock, have *a right* to this blessing; so much so that women who beget children in adultery or fornication should not be permitted to receive this special blessing, but rather should be made to do public penance."

"Ad hanc benedictionem JUS TANTUM *habent mulieres quae ex legitimo matrimonio pepererunt; ita ut ad hanc admitti nequeant*

illae quae notorie ex adulterio aut fornicatione prolem pepererunt, iis potius imponenda esset publica poenitentia." (De Herdt, S. Liturg. juxta Rit. Rom. bened. mulier. n. 11.)

This question was proposed to the Congregation of the Council, on the 18th June, 1859. The Congregation returned the following answer:

"*Ad benedictionem post partum,* JUS *tantummodo habere mulieres, quae ex legitimo matrimonio pepererunt.*"

As is evident from the text, the sacred Congregation speaks only of the right—*jus*—of legitimately married women, to this blessing. The Congregation says nothing as to the permissibility of giving the blessing to unmarried women, after an illegitimate childbirth. It is quite clear that an unmarried woman has no strict *right* or *just claim* to be churched, after giving birth to an illegitimate child. But the question is not one of *right;* the question is one of the *lawfulness* of churching women after an illegitimate birth, not whether the priest committed a sin or acted unjustly in refusing to church Bertha, but whether he would have committed a sin or transgressed the law of the Church, if he *had* churched her.

Although the Roman Ritual may have taken occasion to speak of the churching of women from the Sacrament of Matrimony, still it remains true that the Ritual makes no distinction between legitimate and illegitimate childbirth, but simply describes the ceremony of blessing a woman after childbirth. Indeed it may even be urged that a woman has more need of this blessing after an *illegitimate* birth, than has a woman after a legitimate birth. For the nature and purpose of the ceremony is to purify the woman after confinement, that she may be clean again to enter the sanctuary of the Lord. And certainly a woman who has brought forth a child unlawfully, has more need of being purified before entering the church, than the

woman who has borne a legitimate child. And if the blessing were to be omitted in the case of a notoriously illegitimate childbirth on account of the scandal it would occasion, still exception should be made for the poor woman who has brought forth her child in secret, and who was led into sin by deception or human frailty. In some countries, as in Belgium, for instance, in the case of a notorious illegitimate birth, the mother may not be churched except by the archpriest or dean, in order to enable the archpriest or the dean to discover, if possible, the identity of the father of the child, in order to institute legal proceedings against him. In some dioceses in Ireland, women who have given birth to illegitimate children are prohibited from being churched; in other dioceses they are restricted. In the diocese of Cashel and Emly there is this statute, dating from 1782:

Nulla mulier quae extra matrimonium pepererit, ante mensem elapsum purificetur; si iterum et similiter pepererit, ante duos menses elapsos purificetur; ter extra matrimonium pariens, nunquam purificetur." (O'Kane, Rubrics, p. 214.)

To conclude. Women who give birth to illegitimate children have no strict *right* to be churched, according to the decree of the sacred Congregation of the Council, June 18, 1859.

Further than this there is no general law of the Church concerning the churching of women, except that it belongs to the rights of the parish priest. If, therefore, there exist no diocesan statute, prohibiting the churching of women after an illegitimate childbirth, the parish priest is at liberty to do whatever he judges best in any particular case.

In the case before us we are inclined to think that the pastor was too harsh with Bertha. The poor woman had evidently suffered a great deal already, and the blessing might have helped her to regain

her self-respect. There is danger that she may go wrong altogether, now that she feels herself so dishonored and she has need of great kindness and forbearance to help her rehabilitate herself in the esteem of the community. She would seem to be worthy of praise, rather than of contumely for desiring to receive the blessing *post partum,* and in the majority of such unfortunate cases kindliness will produce better results than severity.

III. LOW MASS ON HOLY THURSDAY.

We were asked, last year, shortly before Holy Week, by the pastor of a small country parish, whether it would be lawful for him to say a low Mass on Holy Thursday for the accommodation of his people, when it was practically impossible for him to carry out any of the other ceremonies of Holy Thursday or to say the Mass of the presanctified on Good Friday, or to perform any of the sacred rites of Easter Saturday. His people, he said, could not attend any other church on that day on account of the distance, nor would they understand why he did not say Mass on Holy Thursday, even though he could not hold services on Good Friday or Holy Saturday. His people were very anxious to hear Mass on that day above all others, and to receive Holy Communion, as it was the august anniversary of the institution of the Blessed Sacrament, and he was very anxious to satisfy their desires, if it were at all lawful for him to do so.

Answer. Gasparri, tract. can. de Smo. Euch. n. 67, says: "The general principle that obtains in the Church to-day is, that Mass may be celebrated on any day in the year." "Haec disciplina viget hodie: nempe principium generale est Missam celebrari posse qualibet die." However, the Latin Rite excepts from this general rule, *the three last days of* Holy Week, viz., Holy Thursday, Good Friday and Holy Saturday. But even as regards these three days, there is a great difference between Holy Thursday and the other two days. Holy Thursday has its own proper Mass, and is not a *"dies aliturgicus."* Indeed, formerly, three Masses were celebrated on Holy Thursday; one for reconciling penitents to the Church, the other for the consecration of the oils, and a third one in memory of the institution

of the Holy Eucharist. It is a very ancient custom in the Church, that the clergy abstain from saying Mass on Holy Thursday, and assist at this third Mass. And thus the custom was gradually introduced, that on Holy Thursday a *solemn Mass* was celebrated, and all *low Masses* were forbidden. This is now the general rule for the whole Church; private Masses, or low Masses, are prohibited on Holy Thursday. But this rule again is not so absolute that it suffers no exceptions. *"Porro Missas privatas feria V. majoris hebdomadae prohiberi est regula generalis; quae tamen non est adeo absoluta ut nunquam hac die pro fidelium commoditate Missas privatas celebrare liceat."* (Ibid. n. 75.)

Among the exceptions, now, that writers on the sacred liturgy enumerate, when it is lawful to say a low Mass on Holy Thursday, we find the very case as stated in the beginning of this article.

In the year 1821, the following *"Dubium"* was laid before the Congregation of Rites:

May the custom be tolerated that obtains in some parishes, especially in the country, of celebrating a low Mass on Holy Thursday, when the other sacred rites, prescribed to be performed on that day and on Good Friday, can not be carried out, owing to the lack of clergy; or is the custom to be abolished?

"An toleranda sit consuetudo vigens in quibusdam paroeciis praesertim ruralibus, celebrandi per Parochum MISSAM LECTAM *Feria V. in Coena Domini, quin peragi valeant eadem Feria et sequenti, caeterae ecclesiasticae functiones prescriptae, ob clericorum defectum; vel potius abolenda?"*

The Sacred Congregation of Rites made reply, on June 28, 1821, as follows:

"Yes (the custom may be tolerated of saying a *low Mass* on Holy Thursday, even when it is impossible to carry out any of the other

ceremonies) with certain restrictions; namely, that the Ordinary of the diocese endeavor to have the sacred rites and ceremonies of Holy Thursday, Good Friday and Holy Saturday carried out according to the small Ritual of Benedict XIII. published in 1725, in all parishes where at least three or four clergy can be had; as regards other parishes, where there are no clergy, the Ordinary may permit for the accommodation of the people, that pastors, having first obtained permission each year, celebrate a *low Mass* on Holy Thursday, provided the low Mass be said at an earlier hour than the Mass in the cathedral or in the parent church."

"Sacra eadem Congregatio re diligenter discussa, audito Consultoris voto, censuit respondendum: Affirmative, et ab mentem: Mens est ut locorum Ordinarii quoad paroecias in quibus haberi possunt tres, quatuorve saltem Clerici, sacras functiones Feriis V. et VI. ac Sabbato majoris hebdomadae peragi studeant, servata forma parvi Ritualis s. m. Benedicti XIII. anno 1725 *jussu editi; quoad alias paroecias, quae clericis destituuntur indulgere valeant ob populi commoditatem, ut Parochi (petita quotannis venia) Feria V. in Coena Domini Missam lectam celebrare possint, prius quam in cathedrali vel matrice, conventualis incipiat. Et ad D. Secretarium cum SSmo."*

This reply of the Sacred Congregation of Rites was approved and confirmed by Pius VII., on July 31, 1821.

If we enquire farther, as to the reason of the present discipline of the Church, which forbids low Masses on Holy Thursday, we find that it is owing not to the liturgical quality of the day, because Holy Thursday has its own proper Mass, but to the reverence due to the most sublime mystery of the institution of the Holy Eucharist. This reverence is emphasized by the priests abstaining from celebrating the divine mysteries, and receiving Holy Communion,

after the manner of the laity, from the hands of the bishop or parish priest, who says the Mass. For thus they recall more vividly the scene of the Last Supper, when the disciples received the body and blood of our divine Saviour under the species of bread and wine, from the hands of the Saviour Himself.

"*For as our divine Saviour,*" says Benedict XIV., "*first partook of the divine mysteries Himself, and then gave to His apostles, so it is becoming that the priest having first received the Holy Eucharist himself, should thereupon distribute it to the other clergy, who are attached to the church where the holy sacrifice is offered*" (in Inst. 38).

Since, however, there are many small country churches, where it is impossible to carry out the other rites and ceremonies of Holy Week, Benedict XIII. had a small ritual* compiled for the use of poor parishes, which enables them to have very simple services on Holy Thursday and Good Friday and Holy Saturday. And this seems to have been the opinion of Benedict XIV., for when he was Archbishop of Bologna, he ordained "*si vero praeter* PAROCHUM IN SUA PAROCHIA, *sacerdos aliquis. . . . Missam privatim Fer. V., VI., ac Sabbato majoris hebdomadae celebrare ausus fuerit, ipsum graviter puniemus etc.*"

Again the Sacred Congregation of Rites was asked: "*An in Feria V. Coena Domini celebrari possit in ecclesia* (non in privato valetudinarii sacello, sed publica in ecclesia) *una Missa privata propter infirmos, excepta solemni,*" answered on March 27, 1773: *arbitria Episcopi.*

Again the Sacred Congregation was asked: "*An liceat praedicta Feria V. Missam canere absque alterius hostiae consecratione et absque processione.*" The reply was: "*Affirmative, juxta decretum Pii Papae VII., de venia saltem episcopi.*" D'Annibale, III., 402.

*Appeared in English under the title: "The Ceremonies of Holy Week in Churches with Only One Priest." (Wagner, New York.)

not. 20, remarks that in many places the bishop's permission is not asked.

Fr. Schneider, S.J., interprets the words of the Congregation of Rites in the decree of June 28, 1821, "*paroeciae quae clericis destituuntur*" in this wise: "By *parishes without clergy* are meant not only parish churches, but other churches that rank lower than parish churches, but which have a priest attached to them, chapels in hospitals, in prisons, churches or chapels of small convents, of men or women, if they be cloistered and have their own priest and have the permission to reserve the Blessed Sacrament." (Manuale Sacerdotum, p. 532.)

To this Gasparri (de SSmo. Eucharistia, vol. I. n. 81) adds that in practice, a low Mass without any other ceremony, on Holy Thursday, may be said in the chapels of nuns who are in no sense cloistered, if it be inconvenient for them to go to the parish church, v. g., Sisters of Charity.

To sum up, therefore, we say that in churches where there is only one priest, he is obliged to follow the small Ritual of Benedict XIII., if he wishes to hold services on the three last days of Holy Week. But if this is impossible, and he desires only to say a low Mass on Holy Thursday, and to consecrate only one host and to have no procession of the Blessed Sacrament, then he is, generally speaking, obliged to get his bishop's permission for this, each year.

IV. LEGALIZATION OF AN ILLICIT UNION.

Mr. X, a Catholic, left his lawful wife, some years ago, and took up with another woman. He had to promise this other woman that he would marry her as soon as his legitimate wife died. This was the only condition on which she would live with him. After some time, Mr. X's lawful wife died, but he did not marry the woman with whom he was living. The woman kept urging him to get married, but he delayed for one reason or another, until finally he fell dangerously sick. He called in the priest, and before making his confession, he told him that he had never been married to the woman with whom he was living, that he had begun to live with her while his first wife was alive, and they had promised one another to get married as soon as the first wife should die, but had neglected to do so. After this much information, the priest suggested that as he was sick, he would marry them right away, with a dispensation, as the woman was a non-Catholic. The sick man then told the priest that such a course was impossible as the *impedimentum impotentiae* had existed in his case for the last few years, and in the opinion of several reliable physicians, his condition was permanent. He could not leave the woman, as every one thought they were husband and wife, and he did not have long to live. What could be done for them?

Answer. In the first place when Mr. X left his lawful wife, and went to live with another woman, under a mutual promise of marriage, in the event of the first wife's death, he was barred from ever marrying this second woman by the *impedimentum criminis adulterii,* which is a *diriment* impediment. If this were the only

difficulty in the way of Mr. X's marriage to the second woman, the case would be very simple. All that would be required, would be a dispensation *"super impedimento criminis adulterii"* and then a marriage ceremony with the exchange of marriage vows. The woman being a non-Catholic, another dispensation would be required, namely *"dispensatio super impedimento mixtae religionis."* But in the mean time a new impediment to the marriage has arisen, viz., *"impedimentum dirimens impotentiae."* This impediment is created by the *law of nature,* and lies outside the jurisdiction of the Church. The Church has no power over it, and cannot therefore remove it. It stands, therefore, as an effectual bar to the contracting of this marriage. But could the Church not grant a *"sanatio in radice"?* We know that the Church does sometimes grant a *sanatio in radice* even when a diriment impediment *juris naturae* has arisen in the mean time. But the Church grants a *sanatio in radice* only when there was from the beginning a real marriage, which was invalid on account of a diriment impediment of the Church's own making.

In this event, there has been a *mutuus consensus* from the start, but this mutual consent has been prevented from producing its natural and legitimate result, viz., a valid marriage, by reason of an impediment that the Church herself, by her own legislation, has put in the way. The mutual consent of both parties to the marriage contract is supposed to be enduring at the time the *sanatio in radice* is granted. This original mutual consent is what the Church *cures.* And it is cured by the removal of the impediment which rendered it inoperative. As the impediment was of the Church's own making, she can remove it. In which case, the mutual consent of the parties to the marriage immediately goes into effect and creates a valid marriage. It is evident that if the mutual consent

was rendered inoperative in the beginning by an impediment of the *divine law,* or the *natural law,* the Church, having no jurisdiction, could not remove such impediment, and therefore could not *cure* the original consent. It is evident also, that in the case of the original consent being ineffective or inoperative by reason of an ecclesiastical impediment, the consent can be rendered effective and operative, or in the technical language of the law, *cured,* by the removal of the impediment even though, in the meantime, a diriment impediment *juris naturae, v. g. impotentiae,* has arisen. For while this new impediment would act as an effectual bar to a *new* consent, it would not affect the consent that was given before it arose, and which consent is still enduring. In the case of Mr. X, if there had been a marriage ceremony performed between him and the second woman, immediately after the death of his first wife, the marriage would have been invalid *propter impedimentum criminis,* but still it could have been *cured in radice,* by the removal of the *impedimentum criminis,* which is of ecclesiastical origin, supposing that the consent of both parties is still existing. And that consent is not *vitiated,* to use the language of the law, by the subsequent natural impediment. The only thing that prevented that consent originally from creating a valid marriage was the *impedimentum criminis,* and the only obstacle that bars its way at present is that same impediment of crime. The subsequent impediment of *"impos"* would be an effective bar to a new or renewed consent, rendering the same impossible by a law of nature, but would not affect a consent given before it arose. Mr. X, however, did not enter into a marriage contract with this second woman, and therefore there existed no marriage consent which might be cured. He desires now, for the first time, to elicit such consent. But now it is too late, for nature has intervened and rendered Mr. X incapable of entering into a marriage contract, and any

consent that he gives now is, by the law of nature, invalid. Nothing can be done now to legalize, *coram Deo et Ecclesia,* Mr. X's marriage. What further steps should be taken by the priest, will depend on circumstances and the priest's good judgment. If Mr. X has but a short time to live and if, from the nature of his malady, there is no hope of his recovery, it might be best to leave him where he is, as from his statement there is no *periculum peccandi* to be feared. Under other circumstances, it would be advisable to remove him to a hospital.

V. SAYING MASS IN FERMENTED BREAD.

Titius, a priest of the Latin rite, while traveling in the Orient with some friends, who are lay persons, also of the Latin rite, has occasion to say Mass, now in a Greek church, now in a Latin church, and again in a church of some other Oriental rite, and to give Holy Communion to his friends. In whatever church he says Mass, he uses the kind of altar breads they give him, whether fermented or unfermented, and he gives his friends Holy Communion in the same kind. He claims that Leo XIII. abrogated the older discipline, which restricted a Latin priest to the use of unfermented bread in saying Mass, thus leaving a Latin priest free to say Mass in a Greek church *"in fermentato,"* and a Greek priest to say Mass in a Latin church, *"in azymo."* Titius, on his return to America, had occasion to go to his mission-church on Sunday to say Mass for his people, but by some mischance, he forgot to take along any altar breads. The distance to the home church was too great to permit sending there for altar bread and as Titius was already accustomed to say Mass with fermented bread, he sent to one of the neighbors for a piece of bread and said Mass with it, because, he said, the prohibition to do so was only a law of Church discipline, which did not bind in the circumstances in which he found himself. On this occasion, he also gave Holy Communion to the faithful *"in fermentato."* What is to be thought of Titius' *"modus agendi"?*

Answer. In the Oriental Church, the Armenians and the Maronites use *unfermented* bread, or *azym,* for the Holy Sacrifice of the Mass; the Greeks, the Melchites, the Chaldeans, the Syrians and the Copts use *fermented* bread. The use of *fermented* bread by these several rites of the Oriental Church, dates back to the beginning of Christianity. The Latin Church uses only *unfermented* bread, or

azym, although before the IX. or X. century, the use of *fermented* bread for the Holy Sacrifice of the Mass was not unknown in the Latin Church. The Council of Florence, in the decree for the union of the Greeks, allowed the Greeks to retain their ancient custom of consecrating in *fermented* bread, because there is no express command of Our Divine Lord to the contrary, viz., that the Holy Eucharist should be celebrated in *azym.* At the same time that the Council of Florence permitted the Greeks to continue to celebrate the Holy Eucharist in *fermented* bread, the Council issued a decree commanding both the Oriental and the Latin Church to adhere each to its respective rite in the celebration of the Holy Eucharist. This ruling of the Council of Florence (1440) was reaffirmed by St. Pius V. (1566) and later still by Benedict XIV. (1742).

Benedict XIV. says: "Since it was ordained by the General Council of Florence that each and every priest should celebrate the Holy Eucharist according to the rite of his Church, if the Latin Church, then in *azym,* if the Greek Church, then in *fermented;* and since it has been forbidden by the Roman Pontiffs, our predecessors, for a Latin priest to use the Greek rite, or a Greek priest the Latin rite, we do now strictly forbid, under pain of permanent suspension, Greek priests to celebrate Mass and other divine offices or to cause them to be celebrated according to the Latin rite, and Latin priests according to the Greek rite, under any pretext whatsoever of having obtained faculties from the Apostolic See or its legates, or even from the Grand Penitentiary, for Greeks to use the Latin rite or for Latins to use the Greek" (Const. *"Etsi pastoralis,"* vi.).

This precept of the Church, commanding priests of different rites to conform to their own rite in all things pertaining to the celebration of the divine mysteries, has always been very strictly interpreted by the theologians. St. Alphonsus, VI., n. 204, maintains that it is

the common teaching of theologians that a Latin priest would not be allowed to celebrate in *fermented* bread, even to give a dying person viaticum, neither would a Greek priest be allowed to celebrate in *azym.* The only case in which this would be lawful, would be to *complete* the Holy Sacrifice of the Mass.

But now there arises the question: Suppose a Latin priest is traveling through a country where the Greek rite prevails, how is he to say Mass? What rite shall he use? Is he at liberty to use the Greek rite, if it suits his convenience? Formerly, theologians did not agree as to what such a priest may do or must do under the circumstances. Some theologians held that the priest ought to observe the rite of the country through which he traveled, thus a Latin priest was to say Mass with *fermented* bread, if he were traveling through the country of the Greeks, and a Greek priest was to say Mass with azym if he happened to be journeying through the country of the Latins (cf. Ledesma iv. p. 1).

Others, as St. Alphonsus, taught that a priest on his travels might use either rite, according as it suited his convenience; and this view the holy doctor calls *communis et probabilissima* (vi. n. 204). Others again held that a Latin priest, passing through a country of the Greek rite, ought to celebrate Mass in *azym,* if there was a Latin church within reach; otherwise he might say Mass in *fermented* bread. Gasparri, de Euch. II. n. 805, taught that it was never allowed for a Latin priest to say Mass with fermented bread: *"Vera sententia est sacerdotem Latinum peregrinantem per loca Graecorum et in Graeca ecclesia celebrantem et sacerdotem Graecum peregrinantem per loca Latinorum et in Latina ecclesia celebrantem, non solum posse, sed etiam debere ritum suum servare et ideo non posse Latinum in fermento, Graecum in azymo sacrificium eucharis-*

ticum offerre. Id enim ex constitutionibus pontificiis quae hac de re agunt, non obscure eruitur."

Noldin, S.J., de Euch. 106, b. said: *"Sacerdos in itinere constitutus potest in locis, ubi deest ecclesia proprii ritus, pro lubitu vel in azymo, vel in fermentato consecrare. Neque obstat citata constitutio benedictina, quippe quae de illis tantum sacerdotibus agat, qui domicilium in loco alieni ritus habent."*

In answer, therefore, to the question whether Titius did right in saying Mass in a church of the Greek or Latin rite and using fermented or unfermented bread, as it suited his convenience, it must now be said that since the promulgation of the Code Titius' action would be wrong, no matter what opinions were held formerly in this matter. The Code in Canon 816 requires the priest to use the altar bread prescribed by the respective rite to which he belongs, no matter where he says Mass.

To the second question, namely, whether it was lawful to say Mass at his mission church, after his return from his travels, in fermented bread, because he had no azym, we answer it was unlawful. There is no theologian who would justify him in that. The precept of hearing Mass on Sunday is less binding than the precept of saying Mass in one's own rite. Indeed, as we said above, not even to administer holy Viaticum, would this be allowed (cf. Lehmkuhl, II, n. 121; Gasparri, de Euch. n. 804).

Regarding the Communion of the faithful of the different rites, the S. Congregation of the Propaganda decreed on Aug. 18, 1893, as follows: *"Omnibus fidelibus cujuscunque ritus sive Latini sive Orientalis, degentibus in locis, in quibus non sit ecclesia aut sacerdos proprii ritus, facultas in posterum a s. sede conceditur, s. communionem non modo in articulo mortis et pro paschali praecepto*

adimplendo, sed etiam quovis tempore devotionis gratia juxta ritum ecclesiae existentis in praedictis locis, dummodo catholico sit, recipiendi."

A year later, Dec. 4, 1894, Leo XIII. extended this privilege to all the faithful who could not attend a church of their own rite, without serious inconvenience on account of the distance, of receiving Holy Communion in a church of another rite, in azym or fermented according to the rite of the church attended, provided this church was in communion with the Holy See.

Pope Pius X. September 14, 1912, allowed reception of Holy Communion in another rite without any restriction except as to the Easter duty. The Code, in Canon 866, gives all the faithful of any rite permission for devotion sake to receive the Blessed Sacrament consecrated in any rite. It advises the faithful to receive the Easter Communion in their own rite. The Holy Viaticum is to be received in one's own rite, but in case of necessity it is lawful to receive it in any rite.

As to the celebration of Mass in another rite, the Code, besides decreeing that a priest must everywhere use the bread prescribed in his own rite, insists in Canon 819 that he must use the liturgical language of his own rite; Canon 823 allows him to say Holy Mass on an altar consecrated according to another rite, when there is no altar of his own rite, but it forbids the priests of the Latin rite to say Mass on the *antimensia* of the Greeks; these *antimensia* are pieces of cloth of about the size of our corporals, with relics of the saints sewed up in them. The question whether it is lawful for a priest of the Latin rite to say Mass with leavened bread if otherwise he could not give the Viaticum to a person in danger of death, is not settled by the Code.

VI. DEFRAUDING AN INSURANCE COMPANY. A CASE OF RESTITUTION.

A father wished to have his son who was not in very good physical condition, insured in his labor union, and fearing he would not be passed by the examining physician, sent another son to undergo the physician's examination, and a policy of several thousands of dollars was taken out. After paying premiums on this policy for several years, the father became worried about the honesty of his method of procuring the policy. He says that in his anxiety he went to a priest and told him the whole story of the policy and the priest told him it was all right. Recently the son died and the father applied for the money, but has received none as yet, and it is rumored that on account of the great number of recent labor troubles, the union in question will, in all likelihood, be unable to satisfy the claim. In case the union does settle the claim, either in whole or in part, will the father not have to forfeit all that he paid in for premiums, as he paid the premiums to perpetuate an evident fraud? And what responsibility rests on the priest, to whom the father says that he went for advice, and who told him that it was all right to continue the payments of the premiums?

ANSWER. When the father wished to have his son insured in his labor union, he wished to enter into a true and burdensome contract with the labor union. This contract is known in moral theology as *contractus aleatorius, in quo illud quod datur vel promittitur ab uno vel alterutro contrahente, pendet ab incerto eventu.* The contract depends on an uncertain contingency, like the throw of the dice. Now one of the conditions of an aleatory contract is that the risk to be taken be made known honestly and without equivocation.

If the person assuming the risk is knowingly deceived by the other party to the contract, regarding the substance of the risk, then the contract is void by the law of natural justice, since the person assuming the risk was deceived as to the substance of the contract. In a contract for life insurance, the party seeking insurance must not fraudulently conceal or distort the risk assumed by the company or labor union, but must submit to a physical examination and answer honestly and without equivocation all legitimate questions concerning his physical condition past and present. If while undergoing the examination, the applicant for life insurance conceal some disease or ailment, the presence of which greatly increases the risk assumed by the company, then he wilfully deceives the company regarding something that is substantial to the contract and forfeits all claim to any money paid him, and must repair any damages that the company may have suffered by his action. In the case submitted to us, there has been practised a complete deception on the labor union. One person has been substituted for another. The labor union was made to believe, by fraud, that it was taking a risk on the life of A, while in reality it was taking a risk on the life of B. The union had no knowledge of B, nor of any risk connected with B's life, and, in fact, did not make any contract conditioned by anything connected with B. Therefore, in truth, the labor union had no contract at all with the father of A and B, and is under no obligation whatever to pay him any money, for the death of his son. Therefore the father may not keep the insurance money, if the labor union eventually pays him any.

But now there arises a second question, concerning the premiums paid to the labor union by the father. Must the father forfeit these, because they were paid to perpetrate a fraud?

No, he must not. The labor union has no title or claim to these

premiums. The only claim the company could have to them, would be as payment for carrying the risk on the son's life. But, as there was no valid contract from the beginning, and as the labor union was not carrying any risk on the life of the son, it can have no claim to this money. We mean, of course, *in foro interno, ante judicis sententiam.* We are trying this case in the court of conscience. If, therefore, the father were to receive the insurance on the life of his son, he would be justified in subtracting the amount of the premiums, before making restitution to the labor union. But he would be obliged to reimburse the union for any expenses they incurred on his son's account, as, for example, fees for medical examinations and certificates, etc. This, however, might be considered cancelled by the interest that the paid-in premiums earned for the labor union.

We now come to the third question. The father says that when his conscience began to trouble him about the honesty of his method of having his son's life insured, he went to a priest and laid the whole matter before him, and the priest told him that "it was all right." The father had been paying the premiums on the policy for several years, when he went to consult the priest. And it is now some three years since he sought the priest's advice.

Supposing now that the man really put the case before the priest, as it is stated here, and that the priest understood him rightly and told him that the means he used to procure the policy were honest (suppositions that we find considerable difficulty in making), what would be the priest's liability before God? How much restitution would he be bound to make, if any?

The question is treated in moral theology under the heading *"de restitutione ob consilium doctrinale nocivum."*

Whoever, *by virtue of his office*, is authorized to give advice, and

through culpable ignorance, or evil intent, gives counsel that proves harmful either to the person seeking the advice or to a third person, he is bound in conscience to repair all the damages that result from his wrong advice. As to this there is no doubt, be the person giving the advice or counsel a physician, or be he a lawyer, or be he a priest, provided only that he give the advice or counsel *by virtue* of his office, in the things pertaining to his profession, and of which the public has a right to demand of him that he know what is right and wrong, what is lawful and what is forbidden. The people have a *strict right* to require of a professional man, who by virtue of his profession is authorized by society to give counsel to those seeking it and to protect the interests of all concerned, that he possess the knowledge his office calls for and that he exercise reasonable diligence in the use and application of his knowledge. If at any time he should realize that his professional knowledge is insufficient for the right exercise of his office, and that harm may result to his clients or to other persons, by advice or counsel proceeding largely from unjustifiable ignorance, he is bound in conscience to suspend the exercise of his office or profession, until he acquire the necessary knowledge, and if he fail to do this, he sins against his conscience, and lays himself liable for all the damage that may result from his lack of knowledge of his profession. Now the priest who assumes the care of souls, is bound in conscience to know the ordinary teachings of moral theology on *justice and rights,* what is honest and dishonest in the ordinary business relations of life, when a man is bound to make restitution, etc. He can scarcely be ignorant of these things and still have the cure of souls, without grievous sin. His ignorance of the common laws of justice, in his actual position, will ordinarily amount to a *gravis culpa.* And therefore he must repair the damages resulting from it. Now, in the case which oc-

cupies us at present, if the labor union should pay the insurance to the father of the dead boy, then when the father, less the amount of the premiums, has returned the money to the labor union the case is settled. But suppose that the labor union is unable to pay any part of the insurance. What is the priest's liability in that event? It is very simple. If, in reality, the father of the dead boy would have ceased paying the premiums, had the priest so advised him, and allowed the policy to lapse, then the priest is bound to pay to the father the amount of the premiums from the time he advised him wrongly up to the time of the son's death. For we consider his advice to have been the efficacious cause of the continuance of these payments, and therefore of that much damage to the father. And as the advice was sought and given *by virtue of his office as a priest,* the advice was *consilium doctrinale nocivum,* VI OFFICII *datum, ex-ignorantia graviter culpabili,* and the giver of it must repair the damages resulting from it.

VII.—ABSOLUTION FROM CENSURES RESERVED BY THE BISHOP.*

Titius, in his confession preparatory for his Easter duty, acknowledges to Caius among other things that he once committed incest with a relative in the second degree. From the remarks of the confessor he learns (what he did not know before) that in the diocese this sin is reserved to the bishop with the censure of excommunication; and, therefore, that he must make his confession to the bishop, as Caius had no faculties to absolve him. However, Titius is in poor health and can not go to the bishop, whose residence is a great distance from the place; moreover, he usually goes to Communion with his wife on the next day (Thursday in Holy Week), and if he omits it this time it will cause scandal and loss of reputation, especially since his wife already suspects him of the very crime he has committed. On hearing this, Caius advises him to go to the pastor, who has, he says, the necessary faculties. Titius reluctantly consents, and when he tells his story to the pastor, the latter distresses him still farther by telling him that his faculties, which were only *ad tempus,* had recently lapsed. The pastor then consoles him by telling him that he can absolve him on other grounds; since, by a happy chance, he had lately received faculties to absolve from Papal censures, *a fortiori* he could do the same in cases reserved to the bishop; for, as the ancient theological saw has it: *"Qui potest plus, potest etiam et minus in eodem genere."*

Quæritur:

1. Whether and when, outside of danger of death, an ordinary

*Dr. Checchi, in *Analecta Ecclesiastia.*

confessor can absolve a penitent from censures reserved to the bishop?

2. Are episcopal censures reserved in such a manner that the sin is reserved when the censure has not been incurred?

3. Was the pastor's reasoning correct?

Ad 1. The question is concerning absolution from censures reserved by the *Bishop*. Canons 2237 and 2254 regulate the question of absolving from censures reserved to the Pope. But since this decree does not affect episcopal cases, we must here follow the rule of the Code on episcopal reserved cases.

The question is, moreover, concerning absolution *extra mortis articulum*.

As to the history of the legislation on episcopal reserved cases the following may be of interest. The Council of Trent, treating of these matters, says:

"Verumtamen pie admodum, ne hac ipsa occasione aliquis pereat, in eadem Ecclesia Dei custoditum semper fuit, ut nulla sit reservatio in articulo mortis, atque ideo omnes sacerdotes quoslibet poenitentes a quibusvis peccatis et censuris absolvere possunt; *extra quem articulum sacerdotes, cum nihil possunt in casibus reservatis, id unum poenitentibus suadere nitantur, ut ad Superiores et legitimos iudices pro beneficio absolutionis accedant.*"

Accordingly any one who falls under a censure reserved by the bishop, and is not in danger of death, is ordinarily bound to go personally to that superior, not being able to receive absolution from an ordinary confessor. However, it can easily happen that on account of some physical or moral impediment the penitent is lawfully hindered from going to the bishop, while at the same time there may be an urgent reason for his getting absolution—e. g., he can not omit receiving Communion or saying Mass without scandal

and loss of reputation; or he will have to miss his yearly Confession or his Easter Communion; or he will have to remain a long while in the state of mortal sin. In such cases neither the Church as a tender mother nor any superior can be considered as wishing to bind the penitent to something impossible, or, at least, very onerous. Therefore under such circumstances the faculties to absolve belong to any confessor. But his course of action will depend upon the nature of the case and the length of the time that the penitent will be hindered from going to the bishop.

Let us suppose in the first place that the impediment to seeing the bishop is *brevis temporis*—that is to say, not lasting beyond six months. Given such an impediment and an urgent case, the confessor can absolve the penitent at least indirectly, imposing on him the obligation of appearing, when circumstances would permit, before the bishop or his representative for such cases, to be absolved directly.

If the impediment to seeing the bishop is *longi temporis* (between six months and five years), the penitent can be absolved directly; with the obligation of appearing before the bishop or his delegate if the sin be reserved with a censure, but otherwise not. If finally the impediment is perpetual, or beyond five years, the reservation is considered as simply done away with, and the penitent is absolved directly without obligation upon him to appear before the higher authorities. (Cf. S. Lig. VI. n. 585; VII. n. 85 ss.; Bucceroni, *De. cens.* 47 ss.) A decree of the Holy Office, July 13, 1916, which has been embodied in the Code in Canons 899 and 900, allows the pastors and those held equal to them in law to absolve from the bishop's reserved cases during the entire period set down for the fulfilment of the Easter duty, and missionaries during the time of the mission. Furthermore, when people who cannot leave the house

on account of sickness receive the Sacraments at home, and when those about to marry go to confession any priest can absolve them from the bishop's reserved cases. Also, whenever the confessor judges that the faculty to absolve them cannot be asked without great inconvenience to the penitent or not without danger of violating the seal of confession the priest can for that case absolve the penitent from the episcopal reserved cases. Finally, whenever the penitent goes to confession in another diocese where that sin is not reserved, even though he goes there precisely with that intention of getting absolution, the reservation does not prevent his receiving absolution.

Ad 2. If it were a question of a case reserved with censure by the Roman Pontiff, there would be no difficulty. For it is the common opinion of Doctors that reservation of such sort is not incurred by those who are unaware of the censure; for papal cases are reserved *principally and immediately* on account of the censure, from which, as a rule, ignorance excuses. Since in these cases the censure is reserved directly, and the sin to which is attached only mediately, therefore, as the sin is indivisible from the censure, when the censure is reserved, the sin also is reserved; and, on the other hand, since the censure is the reason for the reservation of the sin, when the reason (viz., the censure) does not hold, the sin is no longer reserved. (Cf. S. Lig. VI. n. 580.)

So when any case is reserved by the bishop with censure, it is equally certain that the censure is not incurred by one who is unaware of it. But the question arises whether, granted that the person is excused by ignorance from the episcopal censure, the sin itself may not remain reserved.

On this point theologians are divided, as may be seen in S. Lig. (VI. n. 581, dubit. 2), Aversa (*De poenit.* q. 17, *sec.* II, sec. 6) says

"Posset quidem simpliciter tolli censura, et remanere reservatio peccati. Realiter tamen et concomitanter ita se res habet, ut, ablata censura, eo ipso cesset etiam reservatio peccati . . . et ab initio si excusetur quis ab incurrenda censura, quamvis non a culpa, ut contingere potest ob ignorantiam, excusetur pariter a reservatione ipsius culpae. Quia nempe ex intentione Superioris ita coniungitur culpae reservatio cum censura, ut nonnisi cum illa inveniatur. *Et in hac doctrina communiter Doctores conveniunt.*

Among more recent writers, Card. D'Annibale (*Summ.*, Vol. I. n. 340, edit. III.) expresses this opinion:

"In casibus a Rom. Pontifice seu sibi, seu Ordinariis reservatis, convenit reservationem censurae esse principalem, peccati accessoriam; quamobrem, si quid excusat a censura, reservatio penitus cessat. In his, quae Ordinarii sibi reservarunt, non satis convenit; sententia communior tenet, utramque reservationem aeque principalem esse; ac proinde, etsi censura exulet, peccati reservationem manere putant; minus communis, quae mihi verior videtur, tenet, in his idem iuris esse, ac in censuris a Rom. Pontifice reservatis: atque ideo, si censura non incurritur reservationem cessare."

This view is sustained by Ballerini-Palmieri. (Vol. V, n. 476, edit. III.) The contrary opinion, however, is held as the better by St. Alphonsus (*loc. cit.*, n. 581). For this view the following reasons are generally offered:

a. Papal and episcopal cases differ in this, that in the papal cases the censure is reserved principally and indivisibly; in episcopal cases the sin is reserved principally and *per se*, and the censure is attached to it.

b. This is confirmed by the words in which episcopal reservations are expressed in the table of reservations: *"Casus reservati, quibus est adnexa excommunicatio."*

c. The same is proved from the end of reservation, namely, that sinners should be more strictly bound, and that they should be deterred from sin by the double reservation.

But the answer to these reasons is not difficult.

As for the first reason advanced, it is certain that Canon Law does not back up the distinction; and moreover, the words in which the reason is expressed do not present an argument for it, but only state the opinion itself in another form.

To the second D'Annibale answers (*loc. cit. nota* 25) that the words used in expressing these reservations on the tables do not afford an argument: "nam et *nexus* pignori fundus in iure dicitur (*L.* 2, de *Curat. furios. dan.*) et res pignori *nexae* dicuntur (*L.* 22, *de Jure fisci*) et nemo profecto fundum vel rem *accessoria* pignori dixerit."

Finally it is not resonable that for less serious crimes—and such are those reserved by bishops when compared with those reserved by the Pope—the reservation should be more strict than for graver ones. We conclude therefore that the opinion which holds that censures reserved by the bishop are on the same level in law as those reserved by the Pope, is not wanting in grave probability, both intrinsic and extrinsic. And in this case there were grounds enough and to spare for Caius to act on and absolve Titius.

But even if Caius wished to follow the view of St. Alphonsus that in episcopal cases the reservation remains even though the censure for any reason do not hold, he could still have absolved Titius.

For, in the first place, it is evident from the case that Titius was ignorant not only of the censure, but of the reservation also. Now although the more common opinion holds with St. Alphonsus (VI. n. 581) that ignorance of the reservation does not excuse, the oppo-

site view is held by a number of theologians. (Cf. Gury-Ballerini, *De Sacramento Poenitentiae,* n. 383.)

In the second place, even disregarding the point just made, there are other features in the case which are in favor of Titius. He is in poor health, and can not go personally to the bishop, who lives a great distance away; moreover, since he is accustomed to receive Communion on Holy Thursday, he can not omit it without scandal and loss of good name, especially since his wife already suspects him of the incest. There is question, therefore, of a penitent who, though not in danger of death, is legitimately impeded from going to the bishop; and together with this impediment—*brevis temporis* apparently—there is an urgent reason why he should communicate. Now, as is evident from the answer given above to our first question, in such a matter of urgency Caius could absolve Titius *saltem indirecte,* with the obligation of going to the bishop or his delegate whenever circumstances would permit. I say *saltem indirecte,* according to the more common opinion, given by St. Alphonsus (VI. n. 585), and based on the statement of the Council of Trent (Sess. XIV, c. 8) that ordinary priests have no power in reserved cases. But other theologians are of opinion that even in episcopal cases the absolution is always direct, even though the impediment be only *brevis temporis.* The passage from Trent cited by St. Alphonsus does not affect this, for it clearly supposes that there is ability to reach the superior authorities: "Extra quem articulum, sacerdotes, cum nihil possunt in casibus reservatis, id unum poenitentibus persuadere nitantur *ut ad superiores et legitimos iudices pro beneficio absolutionis accedant.*"

These theologians admit, however, that in such cases there remains upon the penitent the obligation of appearing before the superior, not indeed for Confession, but to receive from him a fitting punish-

ment or salutary warnings; so that the onus put upon the penitent is practically the same.

Ad 3. The line of reasoning of the pastor was wrong. For no confessor, even though he have faculties to absolve from Papal cases, can absolve validly or licitly in cases which the bishop has reserved, unless he has special faculties to do so. Clement X. put an end to the controversies which were formerly aroused about this matter, especially with regard to the privileges of regulars, in the Constitution *Superna,* which declares:

"Ex facultatibus per *Mare magnum* aliave privilegia regularibus cuiuscumque ordinis, instituti, aut societatis, etiam Iesu, concessis, factam eis non esse potestatem in casibus ab Episcopo reservatis. . . . Et habentes facultatem absolvendi ab omnibus casibus Sedi Apostolicae reservatis, non ideo a casibus Episcopo reservatis posse absolvere."

The pastor, therefore, has made a wrong application of the principle: "Qui potest plus, potest etiam et minus in eodem *genere.*" This principle holds good when the more and the less are in the same *proximate* genus; for instance, if one have the power of dispensing in certain vows, he has the power of commuting the same. So also if he can absolve from papal cases reserved *speciali modo,* he can absolve from those reserved *simpliciter.* But papal and episcopal reserved cases, though coming under the same remote genus of reserved cases, are not in the same proximate genus.

VIII. CLERICAL CENSURE.

Father X has been forbidden by his bishop, under pain of suspension, to be incurred *ipso facto,* to enter a saloon for a period of one year, for any purpose whatever, except to administer the last sacraments. This is the condition on which the faculties of the diocese have been restored to Father X. He has given the bishop grievous cause for complaint in the past, and caused considerable scandal to the faithful, and the bishop does not feel justified in restoring the faculties of the diocese to him, except on the condition stated above. Father X is careful to observe the condition, while within the limits of the diocese, but whenever he goes beyond the limits of the diocese he feels free to enter a saloon, if he chooses, and does not believe that he incurs the suspension. He argues that a bishop's authority is limited to the territory of his diocese, and never reaches beyond the diocese, because that would be an invasion of another bishop's authority, which is evidently forbidden by the canons of the Church.

He desires to know whether he has incurred the censure of suspension by entering a saloon beyond the limits of the diocese, and whether (in case he has incurred the suspension) he has become *irregular* by violating the censure of suspension and exercising his office of the priesthood.

Answer.—In answering this question, we desire to say a word about the reasons for which a bishop may suspend a priest. Entering a saloon is not a grievous sin. Now the law says that suspension, being a grave punishment, requires a grave sin. How then can a bishop inflict a grave punishment on a priest who is guilty only of a venial sin, or, perhaps, of no sin at all? To this

we answer: While the thing forbidden by the bishop may be of lesser consequence when viewed in itself, nevertheless, it may take on a serious aspect, when viewed in the light of circumstances which make it a source of grave scandal or personal danger or subversive of some serious object which the bishop wishes to attain. *"Proinde cum finis praecepti sit gravis et res praecepta sit fini huic necessaria, gravitas non ex materia, sed ex fine desumitur."* (Schmalzgr. l. 5, tit. 39, n. 60.)

But if the thing commanded or forbidden by the bishop under pain of suspension, be in itself of small consequence, and have only a slight connection with the object proposed by the bishop, then the transgression of the bishop's precept is only a venial sin at most, both in itself, and by reason of its object, and therefore induces no suspension. In the words of Ballerini:

"Quamquam vero praeceptum de re *per se levi*, non obliget sub gravi atque adeo transgressio ejus nec gravem culpam nec poenam censurae inferat; praecipi tamen sub gravi et censura sanciri potest res levis in se spectata, quando *gravis* evadat ratione aut scandali, aut periculi aut finis intenti, etc. Ita v. g. excommunicatio ob clerici percussionem *in se levem* (levem nempe in ratione percussionis; at non levem in ratione inhonorationis), ob gravem nempe irreverentiam status clericalis—ita juste sub censura praecipitur, ut quidam interveniant publicae processioni ad rem gravem ordinatae—item contra tantillum ingredientes januam monasterii—item in clericos nutrientes comam. Secus tamen (S. Alp. n. 31) si res et levis in se foret et ad finem intentum leviter conduceret." (Vol. VII, 128.)

When there exists doubt as to the gravity of the thing commanded, or forbidden, or its close connection with the end the bishop hopes to attain, we must decide in favor of the bishop and the validity of the censure—*standum est pro auctoritate Praelati*

quae est in possessione, atque adeo edicto censurae suam vim esse asserendam.

There can be no doubt, therefore, that the bishop acted wholly within his rights, when he forbade Father X to enter a saloon, under pain of suspension *ipso facto;* because there was both scandal and grave danger connected with the saloon for Father X. And while entering a saloon may not be a grave matter in itself, still under the present circumstances it becomes a grave matter, and may justly be forbidden by the bishop under pain of suspension.

We come now to the second question, viz.: Could Father X's bishop suspend him for entering a saloon outside of the diocese? We must distinguish here between a diocesan statute and a personal command given to an individual. There is question here of a personal command. A diocesan statute is limited by the territory or boundaries of the diocese. It binds no one outside the diocese. A personal precept or command, on the contrary, follows the individual like his shadow, say the canonists, *"haeret ossibus,"* no matter where he goes.

St. Alphonsus, treating this question (l. 7, n. 23), gives two opinions of the theologians, one that a bishop *can* lawfully bind by censure a subject of his diocese, outside the limits of the diocese, the other that he *can not,* and both of these opinions the holy Doctor calls probable, though the one that holds that a priest incurs suspension, even outside the diocese, seems to him the more probable. There are a number of theologians who hold that the power of a bishop is restricted to his diocese even in the matter of a personal command to an individual, but as Ballerini, after Laymann, points out, they rest for their argument on the chapter *"Ut animarum, de constitutionibus, in* 6°" of the *Corpus,* where there is question only of episcopal *laws* or *diocesan statutes,* and not of personal com-

mands. And therefore their opinion has no solid probability. When a bishop forbids a priest of his diocese to do something, under pain of suspension, he pronounces judgment within his own territory. That the judgment goes into effect outside the diocese, when the crime is committed outside the diocese, does not imply that there is any invasion of another bishop's territory, because the censure is incurred *ipso facto,* without a trial at law or any legal proceedings *"sine cognitione causae et sine strepitu judiciario,"* because, as it says in the Canons, *"excommunicatio et quaevis censura latae sententiae tacitam et veluti insensibilem executionem secum trahit."* (C. *Pastoralis* 53, *de Appell.*)

The true reason why a bishop may not lawfully punish by censure in another bishop's diocese is that such a proceeding would be an invasion and a violation of another's judicial territory, which is strictly forbidden by the law. But where a bishop's sentence of censure goes into effect *ipso facto,* without any legal proceedings or trial in court there is no invasion or violation of another's jurisdiction.

Ballerini says that a bishop certainly has the right to suspend his priest for the transgression of his command, even though the priest transgress outside the diocese, nor can the opinion that denies this be said to have any other than a *certain external* probability, which suddenly vanishes, if you examine the reasons on which it rests. (Cf. Ball. VII, 101.)

The Code in Canon 24 rules that precepts given to individuals bind them everywhere (*ubique*); but they cannot be urged in a canonical trial nor do they bind after the superior giving the precept is out of office, unless they are given either by legal document or in the presence of two witnesses. Canon 1933, sec. 4, states that suspension can be inflicted extrajudicially by way of precept.

As to the irregularity incurred by Father X, the Code in Canon 985, sec. 7, states that he who exercises an act of major orders when such exercise has been forbidden by a canonical penalty, either personal or corrective or punitive or local, incurs the irregularity. A grievous offense against the precept committed externally, though secretly, in any place suffices to make Father X irregular. His personal opinion is of no account in this matter, the irregularity in the case is a legal sequence of his wilful violation of the precept to which the censure was attached by the bishop. Canon 988 rules that ignorance of irregularities does not excuse from incurring the same. The fact that Father X followed an opinion concerning the binding force of a personal precept outside the diocese of his bishop does not excuse him from the suspension, for that opinion did not have a solid probability in its favor even before the promulgation of the Code.

IX. AGE AT WHICH CHILDREN BECOME SUBJECT TO THE LAWS OF THE CHURCH.

Quite frequently one finds in one's parish that parents keep small children away from Holy Mass on Sundays, and also that they give them meat to eat on Fridays and other days on which meat is not allowed. At one's objection to these practices, some of the parents claim that the children do not know much at this age and cannot be expected to keep the laws of the Church. Is there any explicit law of the Church, outside of the more or less common opinion of moralists, that children at the age of seven are bound to observe the laws of the Church?

Answer.—Apart from any explicit pronouncement of the Church on the obligation of the laws in the case of children who have come to the age of discretion, the children do certainly come under the laws of the Church, that is to say, those laws which are applicable to their tender age. This is not only the common teaching of moralists, but an accepted principle of law. There are all the requirements necessary to subject them to these laws: children properly baptized are subjects of the Church; they have, as is supposed, the use of reason, and they can know the laws, if those whose duty it is to teach them attend to this duty.

The Code of Canon Law, moreover, answers the question Canon 88, § 3, states that with the completed seventh year of age the law presumes that children have the use of reason. Canon 12 pronounces free from the obligation of the laws those who, though baptized, have not the use of reason; it states further that even if a child should by premature development have the use of reason

before the age of seven, he is nevertheless not yet bound by the laws, unless the law rules otherwise in some case. Canon 2230 declares that children under the age of puberty, twelve years with girls, fourteen with boys, do not fall under the ecclesiastical penalties imposed by law for the very fact of breaking some of the regulations of the Church, but are rather to be corrected by educational punishments.

For the rest, the obligation of the laws for children rests more with the parents than with the children themselves, and it is bad policy to excuse children from the obligations of Catholic life without a really good reason. Many a grievous sin is committed by careless parents who, under the pretext of being good to their children, will not wake them on Sundays in time to get to Mass. God's punishment will visit these sins upon these parents themselves, for if they do not train the children to fulfil their duty towards God, the time will come when these children will not do their duty towards their parents. The Holy Ghost teaches us: "It is good for man to bear the yoke (of the Lord) from his youth."

X. MIXED MARRIAGE BEFORE A PROTESTANT MINISTER.

Sylvia, a Catholic, makes the acquaintance of a young Protestant, who wishes to marry her. He insists, however, upon marriage by a Protestant minister. Sylvia, though warned by her confessor of the sinfulness of such a marriage, finally assents to his proposition. The following Easter she comes to Confession, seemingly repentant of the wrong done, and promises to use all her influence upon her husband; but so far she has been unable to make him promise a Catholic bringing up for the children, or to get his consent to a repetition of the marriage ceremony before a Catholic priest and witnesses.

The questions are:

1. Is the marriage valid?

2. If not, must Sylvia leave her husband, or may she fulfil her conjugal duties in view of his *bona fides,* or can and must the marriage be validated *in radice?*

3. May the confessor give Sylvia absolution and admit her to Holy Communion, and on what conditions?

Solution and argument.

1. The answer to the first question depends upon whether the marriage took place before April 19, 1908. If so, one must investigate whether at the place of the marriage ceremony or at the place of abode of both participants the decree of Trent on clandestinity had been promulgated and made binding for Protestants—i. e., promulgated before the Protestants formed independent religious communities. If this is the case, and if no general dispensation has been granted by the Holy See in regard to mixed marriages, such as

has been done for some territories, or an extension of the declaration of Benedict XIV., pronouncing Protestant mixed marriages valid, as in Holland, then Sylvia's marriage is invalid. But if the decrees of the Council of Trent have never been promulgated, or not until AFTER the Protestants had formed independent religious communities, whether at the domicile of either of the contracting parties, or (in case the ceremony took place elsewhere) at the place of marriage, then Sylvia's marriage is valid, notwithstanding the Protestant ceremony, because the intention of entering into true matrimony can not be doubted. Since April 19, 1908, all marriages outside the Catholic Church between two parties baptized in the Catholic Church, or between a non-Catholic and one baptized in the Catholic Church are invalid. Exception from this rule was made only for mixed marriages in Germany, and a few other countries in Europe. The Code did away with this exception.

2. If the marriage is *valid,* Sylvia may of course fulfil her duties in spite of the sinfulness of such marriage. Whether she *must* do so is not so unconditioned and can not be decided in a general way. In deciding this point it would have to be taken into consideration whether the refusal of the wife would be likely to induce her husband to the, for him, difficult consent to a Catholic education of the children. An obstinate non-compliance on the part of the wife would, however, very seldom have the desired effect, would on the contrary be productive of virulence, so that for these reasons such non-compliance can rarely be an obligation, and for the case in view it will be sufficient to regard it as permissible.

If the marriage is *invalid,* neither the *bona fides* of Sylvia nor the *bona fides* of her husband can justify their conjugal relations in such a manner that the confessor can positively permit them. They may only be permitted as long as the validity or invalidity

of the marriage remains in doubt even after careful investigation, but not if the marriage is undoubtedly invalid. Even then, however, it is a question of prudence whether the confessor, so long as Sylvia believes firmly in the validity of her marriage, should not be silent on the subject, until the affair could with promise of success be settled definitely.

This raises the further question, *how* the matter can be finally settled, whether Sylvia must leave her husband, or whether the marriage could or should be made valid. If there is no prospect of the *sanatio* of the marriage, then there remains nothing for Sylvia but to leave her husband. Upon learning of the invalidity of her marriage she is obliged to do so even at the risk of coming into conflict with civil laws. Even in case where a *sanatio* of the marriage is not entirely out of the range of possibility, it would be better for the wife to leave her husband if the marriage is still without issue and if, on the other hand, the man persistently refuses to consent to a Catholic education of possible offspring. For her better protection Sylvia might, especially if her marriage was also a civil one, try and find a ground for separation under the civil law.

The most important point is whether there is any prospect for a sanction of the marriage. If the husband refuses assistance from the priest who has the case in hand, and if he absolutely refuses a renewal of the marriage vow before him, then any other validation but a *sanatio in radice* is impossible, and therefore excluded. But will a *sanatio in radice* be granted? Formerly such a *sanatio* has been almost impossible in view of the persistent refusal of the Protestant part to consent to the Catholic education of the children. Recently, however, in view of the difficulty of dissolving a civil marriage, Rome has granted it in acute cases, if the Catholic party used his or her utmost efforts to have the children brought up in the

Catholic faith. An interesting case of this kind is found in the *Acta S. Sedis,* Vol. xxx. pp. 382, etc. It treats of an invalid union between a Catholic woman and a non-baptized man by civil marriage. The latter refused to be baptized or to guarantee a Catholic education of the children, but gave his wife a free hand as regards the actual bringing up of the children. To separate this wife from her husband offered too many difficulties. Rome gave a dispensation for the impediment of *disparitas cultus* and then validated the marriage *in radice* on the condition that the wife should be impressed with her most rigorous duty to use her utmost efforts for the conversion of her husband, and to look out for the Catholic education of all their offspring. This case has a great similarity with the one now under consideration. If in Sylvia's case a dissolution of the marriage offers too many difficulties, there remains nothing but to inquire whether the bishop will consider the circumstances sufficiently important to grant a *sanatio in radice.*

3. The third question is, whether Sylvia can be admitted to the sacraments. Here we must make distinction between Communion and absolution. As the case must be considered a public one, Sylvia can not be admitted to Holy Communion until the scandal given by her offense has been publicly expiated and reconciliation with the Church has taken place. This is not done until the question of her invalid marriage has been settled either by separation or by validation. Even if Sylvia should be ignorant, and meanwhile be left in ignorance, of the invalidity of her marriage, still she is aware of the grievous sinfulness which lies in a Protestant marriage ceremony for Catholics; she knows that that alone excludes her from the sacraments until everything has been satisfactorily settled. The same must of course be said of the priestly absolution, because marriage before a Protestant minister brings with it for the Catholic excom-

munication, *in utroque foro;* however, ignorance of excommunication may have excused the action before the conscience, and on the other hand the necessary reparation and public repentance, or renunciation before witnesses if necessary, may take place before the request to the bishop and the subsequent granting of a dispensation is accomplished. For these reasons it would not be necessary to postpone a reconciliation with God through priestly absolution. Care is to be taken, that Sylvia has the sincere intention to conform to the requirements of the Church. The confessor must therefore insist upon these conditions: 1. Sylvia must faithfully promise to conform to the requirements of the bishop, who by the new faculties has the power to grant the *sanatio.* 2. She must faithfully promise to do her utmost to bring about the conversion of her husband and the Catholic education of her children. 3. If she is aware of the invalidity of the marriage she must in the meanwhile refrain from the conjugal relation, and as this would be difficult if she lives with her husband, she must find a pretext to go away from him for awhile. 4. She must, if so required by the rules of the diocese, publicly renounce before the pastor and witnesses her scandalous violation of the precepts of the Church as regards mixed marriages.

If possible to obtain these points from Sylvia, then there would be nothing in the way of sacramental absolution, at least if the priest has the power to absolve *in foro interno* from this censure, otherwise a request for release from the excommunication would have to be made to the proper authorities—unless indeed ignorance has excused from excommunication. If the permission of the authorities would take too long to obtain, and if Sylvia would find it too hard to carry longer her heavy burden of sin, then the confessor may, without special authorization, give absolution from excommunication and sin, with the obligation, to have recourse

either to the bishop or the Holy See within a month. Sylvia would have to declare her determination to perform any penance decided upon for her by the bishop or the Holy See, and she must give her consent that recourse be taken to the authorities; she must be made to understand that otherwise she would fall anew under the ban of excommunication. The authority to give absolution from papal cases "in the meantime," merely for the reason that it would be too hard for the penitent to wait longer, has been explicitly given to confessors by decree of the Holy Office of June 16, 1897, with approbation of the Holy Father which decree has been embodied in Canon 2254 of the Code. The most difficult point in our case would probably be the demand stipulated under No. 3, if Sylvia be aware of the invalidity of her marriage. If a temporary absence from home can not be arranged, and if Sylvia does not show a determination to employ the means necessary to make the proximate danger of committing sin a remote one, then there can under no circumstances be any absolution until everything has been properly put in order.

XI. HYSTERICAL SCRUPULOUSNESS OF A NUN.

Bertha, an innocent country maiden, receives her education in a convent. After passing her examinations, she takes the veil and is employed as teacher. After a few years the Superioress is informed that Bertha shows undue attachment for some of her young girl pupils, thereby causing dissatisfaction to the others. The Superioress calls Bertha's attention to the error of her action, first in kindness, and, when this does not bring about a reform, is obliged to give her a severe reprimand. Bertha complains about this to her confessor, concluding with the words: "If this small affair, in which I have thought of nothing evil, is sinful, what a great sinner I must be! Then I am afraid I have left out many sins in my confessions, and none of them may have been valid."

The confessor takes great pains to pacify Bertha, but in vain. In fact, Bertha's trouble and anxiety increase after each confession; she becomes more and more scrupulous and answers to the admonitions and warnings of her confessor with all kinds of counter-arguments. The latter at length finds himself utterly helpless, and sends Bertha to the extraordinary confessor, the pastor of the place. He also takes great trouble with her for a time, but without any good result. Not knowing what to do, he sends Bertha to his curate, a zealous man of great piety. The curate, who is besides the teacher of Catechism in Bertha's class, gains her full confidence. Whatever Bertha wishes to do or not to do, she always knows how to get her own way. If her Superioress refuses her something, she obtains permission from one of her confessors. If one refuses, she goes to the other. If one confessor orders her to do a certain thing, she gets a dispensation from another one. Before the Superi-

oress she pleads the orders of the confessor, and before the confessor she asserts the authority of her Superioress.

In this way she gradually frees herself from observance of the rule. Meditation, prayer, spiritual reading, all these things cause her irritation. Before Confession she gets convulsions, trembles in her whole body, and becomes speechless. Notwithstanding all this her class is in excellent condition. Her looks do not betray anything unusual, except by the restlessness of her eyes and the pallor of her face. She loses her appetite and becomes more and more peculiar in her actions. By and by she takes several of the sisters into her confidence. They take her part, and the discipline of the convent is seriously impaired. When sterner measures are taken with Bertha she threatens suicide. Scenes and fits before her Superioress and the confessors become more frequent and more violent. Daily, and sometimes several times a day, she writes to the chaplain: "Permit me to call on you," or "If you do not come to see me at once, I shall jump out of the window," etc. These threats of suicide Bertha uses to keep everybody in check.

Finally these things become unbearable, and Bertha is sent to the home of her mother, a little village in the mountains. A physician of repute pronounces Bertha's health in perfect condition, but declares that her nerves are somewhat overwrought.

Dressed in the sisters' gown, Bertha goes to Confession to the village chaplain and employs here her old tactics. He listens to her repeatedly and tries in vain to pacify her with kind words. Finally he deals with her with severity, especially as Bertha begins to call several times a day at his residence, to see him about trifling matters and scruples. His change of manner suddenly ends her convulsions, and she becomes outwardly perfectly quiet. He has forfeited her confidence, and she goes no longer to him but to other

priests in the neighborhood to Confession, and finding that she can not have her way she ceases going to Confession altogether. After that she writes menacing letters to her confessor at the convent, and obtains from him direction and advice. Repeatedly she visits a young physician to confide to him her scruples. After three months she returns to the convent, without having in any way improved.

Questions:

1. Has Bertha received proper treatment?
2. How should Bertha have been treated?
3. How is she to be treated in *statu quo?*

1. (a) Bertha's preference for some of her pupils was sinful (venially) because others felt hurt by these preferences (jealousy, envy), and because it was also detrimental for the welfare of her soul; namely, an obstacle to her duty of striving after perfection, and also dangerous because such attachments frequently lead to gross sensuality and to mortal sins, and in her case would have led there presumably, considering her character. The admonition and subsequent reprimand of the Superioress were therefore in perfect order.

(b) It seems clear from the conduct of the first confessor, at all stages of the case, that from the beginning he was wanting in the necessary prudence and energy. He made a great mistake in giving Bertha dispensations and orders different from those of the other confessors and of her Superioress. He should either have foregone entirely the guidance of Bertha's conscience, or have acted under a perfect understanding with the others. Bertha's condition was aggravated by the yielding and weakness of her first confessor. Her impassioned, proud, and wilful character got the better of him. When at last entreaties and complaints were of no avail and they

proceeded against her with energy and severity it was too late; she fell into convulsions (which were undoubtedly at her command, at least partially), and threatened suicide. It must have greatly flattered her female pride to be able to hold four persons in check. Through dispensation from the rules she lost a strong support and the last hold for her suffering soul.

(c) It was perfectly proper and right to send Bertha home for recreation, and to consult a doctor. The surroundings of home and the reminiscences of her youth combined with suitable medical treatment, and proper spiritual guidance, should have acted in a quieting and healing manner. But all these remedies were without avail, and her recovery was frustrated through the interference of her first confessor. Bertha may be compared to a sick person upon whose ailment several physicians are unable to agree; they give counteracting prescriptions, and thus bring the patient to the brink of the grave.

2. The first confessor should have acquainted himself with the orders given to Bertha by her Superioress, and should have seen to it with all necessary severity that the obedience necessary in a convent was preserved. After handing her over to the spiritual care of another confessor he should have been careful not to interfere; and the pastor also should have given up the case entirely so soon as his assistant became Bertha's confessor. The three could act successfully together only with a previous understanding.

Some one should have placed before Bertha the reasons mentioned under No. 1, to justify to her mind the procedure of her Superioress. Bertha, as an intelligent person, which she was by virtue of her training as a teacher, would have been impressed with their validity. It would have been well, and even necessary, to point out to Bertha the difference between imperfection and sin,

and draw the distinct line between venial and mortal sin applied to her particular case. Her attention should have been drawn to the fact, that as a religious she had made the vow of obedience, and that even in trivial affairs she was obliged to carry out the orders of her Superioress, that especially when her actions were found faulty, was she required to recognize in the decision of her Superioress the will and voice of God, and that she was moreover under obligation of obedience to her confessor when in the confessional, by virtue of which he could forbid her to harbor any thoughts of her former life. She should have been told to consider such thoughts as temptations to be resisted vigorously, that true and genuine piety shows itself in humble submission and willing obedience, etc. Bertha would most likely have been protected against getting into her deplorable condition by a sensible explanation and application of these truths.

3. As Bertha's nerves are affected by continuous brooding and subsequent excitements, it would be best to relieve her of as much teaching as possible, and let her pass most of her time with light work, in fresh air, under the guidance of a sensible and sociable sister. To keep her altogether away from her class, in which she seems interested, might cause much irritation, and prevent or retard her recovery.

An important question remains to be answered: What is to be done in regard to her threats of suicide? The best way would be to treat them with contempt, and keep her, without her knowing it, under constant surveillance. Suicide seems here to have been an empty threat. Boastful people are usually great cowards. Bertha should be told: "If you think it too long before the dear Lord comes and calls you, you can not improve your case by running with open eyes into hell. If you, however, think that your threats of suicide

are making any impression upon me and that you can get me thus to let you do as you please, you are much mistaken. Either you obey promptly, as it becomes a sister, or you leave the convent at once," etc. I would mention also that for persons suffering from nervous irritation a careful application of the cold water cure has been found beneficial for restoring their shattered health. If all these remedies prove without avail, the only thing left is to send Bertha away from the convent, as a community must not be allowed to suffer seriously on account of the vagaries of an individual.

XII. THE ADJUSTING OF MASS STIPENDS.

A certain pastor, whom we may call Practicus, has many Mass stipends left to his church, and is obliged to a considerable extent to have them attended to by brother priests. As the stipend for some of these Masses, however, does not come up to the amount of one dollar, this being the usual stipend in his diocese, he has difficulties in placing them. He helps himself in this embarrassment by using the surplus of other larger Mass stipends to make up the deficiency and to bring the stipend up to the usual amount. Thus he finds himself enabled to have all the Masses attended to. He satisfies his conscience with the argument that he does not retain any of the money, nor any part thereof, but that he is turning over the whole of it, though the amount of some particular stipend is in some cases divided and goes to different hands.

The question whether such a procedure is permissible must be answered with "No."

It is the law that the full stipend—certain exceptions need not be taken into consideration here—must be handed over to the one performing the obligation, and it is not permissible to use the excess of one stipend to make up the deficiency of another. The person donating the higher stipend expects the celebrant to receive the full amount donated, his intention evidently being the desire that his larger offering bring greater benefit. St. Alphonsus writes on this subject as follows (Lib. vi. 322):

Voluntas dantis est, non solum ut missa celebretur, sed ut celebretur tali stipendio; cum enim pinguem tradit stipem, ea intentione dat, ut uberiorem fructum ex missa celebranda percipiat; ergo qui tradito minori stipendio per alium celebrare facit, peccat contra jus-

titiam, non quia defraudat fructu missae dantem eleemosynam; fructum enim jam hic percipit ex sua ante habita pia dispositione; sed quia non exsequitur dantis intentionem, qua vult, ut illa missa, unde percipit fructum, tali stipendio celebretur.

No objection could, of course, be had if the pastor hand a number of both under as well as overpaid Masses to one and the same priest, in whose hands they would then average to the stipend usual in the diocese.

XIII. THE CONFERRING OF A DISPENSATION AND THE SEAL OF CONFESSION.

Cajus hands to his pastor a sealed letter received by him from Rome, which he is instructed to hand to any confessor he will choose. The pastor bids Cajus to make mention of the letter the first time he comes to Confession. Cajus, however, neglects to come to Confession again, though reminded of it by his pastor. Soon after Cajus moves into another, rather remote, parish. The pastor is now in a quandary what to do with the dispensation, for such was the contents of the letter, and is in doubt as to whether to leave Cajus in bona fide that everything is all right, or whether to return the dispensation to him for the purpose of handing it over to his present confessor. Would the *sigillum* be against that? What is to be done?

Solution: The pastor either was Cajus' confessor or he was not. If he was, the handing over of the dispensation took place under the seal of Confession; for the subject of the dispensation was a secret impediment to marriage, of which the pastor knew through the confessional, and for the setting aside of which he himself had asked for the dispensation for his penitent. In this case any mention of the dispensation even to a subsequent confessor of Cajus is excluded. If he was not the confessor of Cajus then the handing over of the dispensation would stand in the same immediate connection with the confessional, if Cajus had had the intention to go to Confession. But Cajus evidently does not intend to do so, and seems to be of the opinion that with the handing over of the letter from Rome to a priest everything necessary had been done. Cajus on his part, therefore, does not make it a matter of Confession,

Nevertheless, the dispensation comes under the obligation of the *sigillum.* For whoever as superior or adviser is by a penitent made acquainted with a fact, receives this knowledge under the seal, and must preserve it under the same. This also is true of the one who has been entrusted with the conferring of such dispensation *"in foro Sacramenti."* Our pastor accepted the commission by receiving the letter from Rome, and therefore put himself under the obligation of the seal. Hence it follows that without the explicit consent of Cajus he can not hand the dispensation over to the latter's present confessor, and, furthermore, that he can only deliver it to Cajus himself in a way which will prevent any violation of the secret.

What should be done under the circumstances? The pastor should try and make Cajus call upon him and then give the necessary explanation. If Cajus will then go to Confession, the pastor can hand him the dispensation under observance of all rules concerning it. If Cajus will not go to Confession, then the pastor must hand the letter over to him with directions to give it at his next Confession to the confessor, so as to make him acquainted with the conditions and decisions of the Holy Father. The conditional invalidity of the marriage should not be mentioned so as not to take away the bona fides, and to avert the liability of formal sin. If Cajus should not appear, then the pastor should keep the letter in a safe place with the directions on it: "To be burned unopened in case of my death."

If there is absolutely no hope of ever seeing Cajus personally, the pastor may burn the dispensation, just as would have to be done with the same after it had been made use of, *sub excommunicatione intra triduum.*

XIV. COMMUTATION OF THE SIMPLE VOW OF CELIBACY.

Alexius, a pious youth, has privately made a vow of perpetual celibacy. A number of deaths, which unexpectedly happened in his family, compel him to get married. For this he receives a dispensation from the bishop. This dispensation is given him through the bishop's authority by his confessor in the confessional in this manner that his vow of celibacy is changed into the obligation of receiving the sacraments of Penance and Communion once a month, with the express stipulation that this dispensation is valid only for the duration of this marriage, and only in regard to his conjugal duties; that outside of this, and in case of a termination of this marriage by the death of his wife, his vow remains in force, and for the contracting of a new marriage another dispensation would be necessary. Some questions may arise in regard to the meaning and effect of this commutation, which we shall try to solve in the following:

1. Is Alexius bound to monthly reception of the sacraments, each time under pain of mortal sin, and, in the instance of Confession, even if he is not conscious of a voluntary sin since his last Confession?

2. Is it reserved to the bishop to grant a dispensation from the duties which are substituted in place of the vow of celibacy?

3. How long will Alexius be obliged to receive the sacraments every month?

4. Is Alexius in his marital state, in his relation to his wife, freed from his vow of celibacy?

1. The question whether Alexius is obliged to receive the sacraments every month, each time *sub gravi,* we must answer to the effect that the reception of the sacraments as an object of a formal vow certainly is a *materia gravis* (see Marc n. 628), and that in our case Alexius is without any doubt bound in each separate case *sub gravi,* as a substitute for his vow. Nor is there doubt that the Church imposes this obligation *sub gravi,* for as Lehmkuhl remarks (P. I. n. 480); The Roman courts, as a rule, do not grant dispensations from the vow of perpetual celibacy except *adjuncta permagna commutatione.*

The duty imposed in this case, to receive the sacraments every month in the application to each separate instance, is not lessened by considering all these Confessions and Communions as one whole, of which a single Confession and Communion would form only a *parvitas materiae.* The words *once a month,* put down evidently *ad finiendam obligationem* (see Sanchez I. VIII. disp. XXXIV. n. 37), make each monthly duty a distinctive whole, and render each separate Confession and Communion a *materia gravis.* Even in the case of welding separate parts into one whole, there could be, as a rule, only an absolute *parvitas materiae,* but not a *materia in se gravis* as part of a whole be considered binding *sub veniali.*

Even in case that Alexius should not be conscious of a voluntary sin since his last Confession, it is to be supposed from the wording of the rescript, as also for other reasons, that the authorities intended to bind him under any circumstances to monthly Confession; for the *finis gravis,* which was the object of prescribing monthly Confessions, can be reached perfectly by an inclusion of sins previously confessed.

2. The obligation of monthly receiving the sacraments, in com-

mutation of the vow of celibacy, is a matter reserved to the bishop.

3. The question, how long will Alexius be held to the monthly reception of the sacraments, we would explain thus: In a recently published similar case, the petitioner, a woman, had to bind herself *for her whole lifetime* to receive the sacraments every month. Lehmkuhl says (P. I. n. 480) of the vow of celibacy, even if made in secret, *"Romana tribunalia non consueverunt dispensare, nisi adjuncta permagna commutatione. . . . idque pro toto vitae tempore."* In our case, however, the confessor was directed to inform Alexius that this commutation would be granted only for the duration of this marriage, and nothing is said of extending its duties for a whole lifetime. Therefore Alexius may not be considered bound to the monthly reception of the sacrament beyond the duration of his marriage.

4. Regarding the effect of the dispensation upon his relation to his wife, the vow of celibacy, which obliges one to abstain from marriage, is broken by marriage and made impossible. The marriage against such a vow is gravely sinful, but it does not any further forbid the use of marriage. The vow not to marry, also called vow of celibacy, the vow of virginity and the vow of chastity are distinct vows. The confessor must ascertain the mind or intention of the penitent at the time he made the vow, for the name which he used to desigate his vow is not sufficient because the technical meaning may not have been known to him. Of these vows only the vow of perfect and perpetual chastity made unconditionally by a person at least eighteen years of age is reserved to the Holy See. As a rule, when the Holy See dispenses a person from the vow of chastity and allows marriage, the vow is not completely removed but only in so far as to allow the marriage and the use

of the marriage rights, for one marriage, so that a second marriage is not lawful without a new dispensation. Besides, all other sexual pleasures outside of the proper use of marriage would be not only against the virtue of chastity, but also against his vow. (Cf. Canon 1309.)

XV. DEFRAUDATION BY A BANK EMPLOYEE. A CASE OF RESTITUTION.

Marcus, an employee in a bank, is importuned by some dishonest fellow-employees to join them in their defraudations. They urge upon him that some former misconduct of his is known to them, and that it would make him lose his position if these matters were brought to the notice of his superiors. He feels that he must do their bidding or lose his bread and butter, for he has neither knowledge nor ability for another calling. In the subsequent constant state of committing fraud, he omits for several years to go to Confession. But in order to amend for his defraudations in some way, he spends considerable money for alms and Mass stipends. At length he hears a certain sermon which moves him deeply, and induces him to go to Confession.

1. What has Marcus to do on account of his defraudations?

2. What advice should he be given for the future?

Ad 1. Marcus is clearly bound to make restitution. The alms and Mass stipends with which he tried to appease his conscience can in no way be taken in account in this respect. The injured party is known, and restitution must be made to it, otherwise the wrong can not be righted (Lehmkuhl, I. 1019. Delama II. 713). The question with which Lehmkuhl deals in Sec. 1031 has no bearing upon our case, because in his case a former confessor bade the penitent to use the ill-gotten money for pious purposes, while in our case Marcus has done this without having such commutation granted to him.

Ad 2. As Marcus is evidently in an embarrassing position, he may be allowed to pretend assistance in the defraudations of the

bank provided he has the intention and means of making restitution for the amount falling to his share. He should keep this money separate from his private possessions, and he must even invest this money in a profitable way, so as to be able to make at some future time as full a restitution as possible to the defrauded bank. The best way for him to pursue would be to open a special bank account for these defrauded sums and leave them in his will, in a legally unassailable form, to the rightful owner. This is advised to provide for the case of a premature or sudden demise. If circumstances alter, however, or if he should be pensioned or freed in some way from the compulsion exercised over him by his fellow-employees, then he must without doubt make restitution as soon as possible, and must not cause it to be delayed until after his death.

Is Marcus obliged to make known the circumstances to his superiors?

Since his fellow-culprits are not subordinate to him, so that he is not responsible for their actions, he is not obliged in justice to take such a step. But when circumstances alter and he leaves his position, then he will be obliged to report the facts to the proper superiors. (Lehmkuhl I. 1013. Del. II. 705.)

XVI. A CASUS OF CONFESSION.

In a certain church the confessional is placed in a somewhat dark corner. On a certain Sunday morning the place is even darker than usual, owing to the rainy day. To the confessional there comes an aged woman, as the confessor learns by her voice and speech. She is just through confessing, when at the near altar the bell is rung for elevation. The confessor tells the woman to pause a little while, until after the elevation, and the woman answers, "Yes, father." The confessor makes the sign of the cross and gathers his thoughts for admonition. After the elevation he turns again to the woman, admonishes and consoles her, etc., gives her her penance and pronounces absolution, ending with his customary "Blessed be the Lord" to the penitent, from whom, to his great surprise, comes the word Amen in a man's deep voice. The confessor, quickly looking up, perceives a young man leave the confessional and disappear. How did this young man get there in place of the aged woman? There is only one explanation. The aged woman must have misunderstood her confessor when he suggested to wait until after the elevation. When the confessor then made the sign of the cross, she probably understood this to be the absolution. Softly she left the place, and just as softly it was taken by the young man, who received the absolution of the priest probably in some astonishment. He may have been agreeably surprised by the imagined fact that this confessor did not even require the telling of his sins.

This would raise now the following questions: 1. Has the confessor rendered himself guilty of *laesio sigilli,* by addressing his admonition, referring to sins of the aged woman, to the young man?

2. Has the woman been absolved? 3. Has the young man been absolved?

1. The confessor may safely be exonerated from the offense of *laesio sigilli.* It is probable that the young man was not able to get any sense out of the admonition addressed to him by the confessor. Nor is it likely that he connected the admonition with the person who preceded him in the confessional. It may therefore be assumed that the confessor has not revealed anything; but even if this be the case the confessor would have to be declared not guilty *ob errorem invincibilem.* He could not possibly presume that some one else had taken the place of the woman.

2. The question, Has the woman been absolved? is to be answered in the affirmative. Though the words *"Ego te absolvo"* were spoken to the young man, the *"te"* was nevertheless meant for the woman, who, we may assume, was still morally present during absolution. Several at least of our moralists have so held in similar cases. In our instance it is moreover very likely that the aged woman was still in church when absolution was pronounced for her. It is therefore, and for these reasons, at least probable that she was absolved.

The third question, however, must be answered in the negative. The young man has not been absolved. He did not conform to the essentials of the sacrament, he did not confess his sins, nor had the confessor any intention of giving him absolution.

Suppose, however, the young man thought *bona fide* he had been absolved, and with this thought, although possibly in the state of mortal sin, went to receive Holy Communion? In this case it is to be held that through Holy Communion his mortal sins were forgiven *per accidens* if he approached the Holy Sacrament *bene attritus.*

XVII. REQUIEM MASSES WITH THE BLESSED SACRAMENT EXPOSED.

It has been a certain fact heretofore that with the Blessed Sacrament exposed *ex causa privata* Requiem Masses have been permissible at the altars of a church with the exception of the altar of exposition. Stipend Masses, Rorate Masses, Sodality Masses, coram Sanctissimo, are classed amongst the category of *expositiones ex causa privata.* Recent theological opinions have, however, interpreted the decree of the S. R. C., of June 13, 1900, in the sense that Requiem Masses even at side altars are not permissible if the Blessed Sacrament is exposed in a church. To this interpretation the following objection has been raised. The decree has reference to a certain *oratorium publicum,* a public chapel, which has two altars, situated in niches opposite each other. The priest standing at the altar on which the Sanctissimum is not exposed, turns his back to the ostensorium, a thing in itself objectionable. Something forbidden for a chapel, furthermore, may not be necessarily forbidden in a church. A decree of the S. R. C. of July 9, 1895, seems also contrary to the above interpretation, as it directs that whenever the Forty Hours' Devotion is kept on All Souls' Day, all masses with the exception of a single one are to be said *pro defunctis,* but in purple vestments. It may therefore be concluded that the decision quoted above has reference to one certain instance and that it does not interfere with already existing decisions.

This last argument is a weighty one. It is a frequent error to generalize decisions rendered *pro casu.* It is possible that a further inquiry would result in a general decision, conforming to the one *pro casu,* but as long as this has not been decided, the decision

pro casu can not be stated as a general law. Take, for instance, the *jejunium naturale*. Because in Lourdes a fast of four hours has been prescribed before the midnight Mass, many have held this to apply also to the Christmas Mass, but such is not the case.

In large churches, where the case cited at the beginning of this article occurs not infrequently, it will therefore be safe to continue the previous usage, until the R. C. sees fit to pronounce universally on this subject.

A decree of the S. Congregation of Rites, April 28, 1902, ruled that if the exposition of the Blessed Sacrament is held for a public cause, Requiem Masses in the same church are forbidden. The S. Congregation referred to the decree of May 7, 1746, in which it was stated that if the exposition is for private cause, Requiem Masses may be said during the exposition, but not so if the exposition is for a public cause.

XVIII. MEANS BY WHICH TO INDUCE THOSE SERIOUSLY SICK TO RECEIVE THE SACRAMENTS.

Especially in parts of the country where Catholics are as yet sparsely settled, it often happens that by contact with irreligious people Catholics grow cold in their faith and neglect its practices. If they fall into sickness, such people are not likely to care much for the consolations of the church, and the priest usually meets with a cold reception, if he is called in at all. But even if received in a friendly way, he is likely to meet with a polite refusal as soon as he mentions Confession, etc. What can be done under such conditions to induce Catholics, weak and indifferent in faith, to the reception of the sacraments?

Above all, the worthy, virtuous priest will seek assistance from heaven, and will offer up his pious prayers for divine guidance and help for a task that seems beyond human power. Then he will proceed in confidence, straining at the same time all his faculties of mind to discover the means best suited to the needs of each particular instance. A safe key to the human heart is the genuine priestly love. Diplomacy may often be resorted to with good result. The former general of the Society of Jesus, P. Beckx, accomplished the conversion of an obstinate murderer, condemned to death, by first playing chess with the man and thus gradually gaining his friendship and confidence. Sick people in general greatly appreciate expressions of courtesy and sympathy; the priest may with advantage facilitate his task by inquiring of children about their sick father and sending him sympathy and good wishes, also paying a preliminary friendly call without mentioning anything about religion, thus gradually getting the patient at ease with the thought of receiving the sacra-

ments. The priest who goes about his task in this manner will have the gratification of greatly lessening in his parish the number of those who die without making their peace with God. A thing of the greatest importance in this connection is that frequent exhortations be made from the pulpit to the people to look out not only for the body, but also for the soul of their sick at home, to send for the priest before the sickness gains too much headway, reminding them of the difference it will make for the peace of those left behind, if they can think of their deceased relatives as having died consoled and fortified by the reception of the sacraments.

XIX. THE MARRIAGE TIE.

Titus, without the least scruple of conscience, has changed his religion a number of times, for the sake of worldly gain. At present, however, he is back in the Catholic Church, and to all appearances, for good. It happens now that he ruins a poor Catholic girl, and she becomes a mother. She insists on his marrying her. He agrees, but on one condition only, namely, that they both go over to Calvinism first, and as members of the church of Calvin, get married. For, says Titus, in case this marriage turns out a failure, and we should wish to have it dissolved, we can get a divorce very easily in the Calvinistic church. And so it happens. They both become Calvinists, and as members of the Calvinistic church are married by the preacher. But the marriage turns out badly. Titus abuses the wife, until at last she is compelled to seek a divorce in the civil courts. The divorce is granted and the woman leaves Titus for good.

She remains single for some time, and then falls in love with a Catholic man, whom she finally marries before a civil magistrate. Some time after this she goes to the priest and begs to be received back into the Catholic Church, and to have this, her second marriage, made or declared valid by the Church.

The question is, What is to be done under the circumstances?

Answer.—For Lucy's marriage with the Catholic man to be *possibly* a valid marriage before God and the Church, it must be shown that her Calvinistic marriage was invalid from its inception. If the first marriage was contracted *after* April 19, 1908, it was absolutely invalid. If it was contracted before the *Ne Temere* became law, the following principles must be considered:

There are good grounds for suspecting that Lucy's first marriage, that is, her Calvinistic marriage with Titus, was invalid from the very beginning. The view non-Catholics take of marriage, namely, that for specified reasons it may be dissolved, *quoad vinculum,* does not necessarily render the marriage of non-Catholics invalid. For their prime purpose is to contract a real and true marriage. Their belief that marriage is dissoluble is only a concomitant error. But when the main purpose of the contracting parties is to contract a *dissoluble* marriage, then the marriage rights themselves, which constitute the subject matter of the marriage contract, and which are mutually transferred in marriage, are materially and substantially vitiated and destroyed. There is a real and substantial defect present in the contract, a so-called *conditio turpis, quae redundat in substantiam Matrimonii* (Lehmkuhl, II., n. 688).

According to the Canon Law, the *conditiones turpes matrimonii substantiae contrariae, in pactum deductae,* render the marriage null and void. In like manner, the Instruction issued under Gregory XVI. to the bishops of Hungary, April 30, 1841, on mixed marriages, holds indeed for the validity, generally, of such marriages, notwithstanding the false opinion of Protestants on the dissolubility of marriage; still this same Instruction calls attention to the fact that the Congr. of the Holy Office, October 2, 1680, to the question: "An sit validum Matrimonium, contractum inter Catholicam et schismaticum cum intentione foedandi vel solvendi matrimonium," gave the following answer: "Si ista sint deducta in pactum, seu cum ista conditione sunt contracta matrimonia, sunt nulla: sin aliter, sunt valida" (Denziger, Enchiridion, n. 1485).

In the case before us there is no question of a mixed marriage. But the grounds for its eventual invalidity are not to be sought for in its character of mixed marriage, as such, but in the false view of

non-Catholics concerning the object and conditions of the marriage consent, which false view of Protestants may easily enter into and affect substantially the object and conditions of the marriage consent. The Code in Canon 1086 says very plainly: "If one or both parties by a positive act of the will excludes marriage itself or all right to the conjugal relations or any of the essential qualities of the marriage (which are its unity, indissolubility and the primary purpose of marriage) the marriage is invalid."

This was true in the case of Titus. He stated expressly that he wished to contract a *dissoluble* marriage. It was for this express purpose that he joined the Calvinistic church—that his marriage might be more easily dissolved in case he should, in the future, desire its annulment. There is no room, therefore, to doubt the invalidity of the marriage between Titus and Lucy. And consequently there is no room for questioning Lucy's ability to contract a valid marriage with the Catholic man and to be received back into the Church. As marriages of baptized persons before a civil magistrate, though mortally sinful, are nevertheless valid in most places, where the Tridentine Decree, Tametsi, has not been published, this second marriage of Lucy to a Catholic, before a civil magistrate, was a true marriage before God and conscience, although mortally sinful, provided only Lucy and the Catholic man intended, at the time, to enter into a true and valid marriage contract, binding before God and in conscience. But the whole case should be brought before the Ordinary of the Diocese, who will name the conditions on which Lucy will be reconciled with the Church.

But if Lucy's marriage with the Catholic man before the magistrate was not looked upon by them as a real marriage, but only as a civil ceremony, prescribed by law, as happens in some countries, then, of course, Lucy's marriage to the Catholic, before the magis-

trate, was no marriage. The pastor should not lend his countenance to it, nor bless it, before he has laid the whole matter before the bishop. It is the bishop's office to determine the invalidity of Lucy's first marriage, with Titus, because that marriage had all the appearances of a valid contract *in foro externo* and before the public. Only after competent Church authority shall have declared it invalid can Lucy proceed to a second marriage. It will be necessary, however, to produce satisfactory proof of Titus' intention, when he married Lucy, of forming a *dissoluble* union only.

XX. FORBIDDEN BOOKS.

Julius, who is a good Catholic, noticed some time back that a young woman, a near relative of his, who cares little about religion or the Church, is passionately fond of the Memoirs of Casanova, which she actually devours herself, and lends to others to read. In order to prevent the spiritual harm done by such reading, Julius borrows the Memoirs from the young woman and hides them where no one can get at them. Some time after this he hears, accidentally, that no one is allowed even to keep in his possession books forbidden by the Index. Thereupon he calls upon his pastor and consults him as to what he ought to do with these Memoirs, of which there are several volumes.

Answer.—Casanova's Memoirs are on the Index, decree of July 28, 1834.

Therefore, 1. Julius dare not keep these Memoirs in his possession, no matter how praiseworthy his purpose, without the permission of the Holy See. St. Alphonsus says:

"Non excusatur is, qui librum vel in aliena domo, vel alieno nomine, vel animo non legendi, habet" (L. vii., n. 297).

Dr. Hollweck, in his work on the Index, comments on these words as follows:

"Concerning the having in one's possession books forbidden by the Index, we must emphasize the fact that it makes no difference whether you keep the book in your own possession or give it to others to keep for you; whether the book belongs to you or to somebody else; whether you intend to read it or no. Moreover, you must have had the book in your possession for a *considerable* length of time before you become guilty of a mortal sin, and incur the cen-

sure attached to the transgression of the law. St. Alphonsus calls *one* or *two* days *parvitas temporis* (l. c. n. 295). The Popes have usually named eight days as the limit of time for giving up bad books. With this fact in mind, it may be safely said that one must keep in one's possession a forbidden book *over one week* in order to be adjudged guilty of a serious infraction of the law and to have incurred the censure attached to it. One may keep the forbidden book in one's possession, even longer than one week, if one does so in order to await a more favorable opportunity of turning the book over to the bishop or vicar-general, or to get the necessary permission to keep it. But one should not keep the book longer than *one month,* for a month is ample time to get the necessary faculties from the Holy See." Thus far Dr. Hollweck.

2. Julius may not burn the book, or otherwise destroy it, because it is not his property.

3. Although the borrower or depositary of another's property is bound to restore the same to the owner upon his demand, or at the stipulated time, still in the case of Julius there is the exception to be made, of which St. Thomas writes: "Quando res restituenda apparet esse graviter nociva ei cui restitutio facienda est, vel alteri, non debet ei tunc restitui, nec tamen debet ille, qui retinet sic rem alienam, sibi appropriare sed vel reservare, ut congruo tempore restituat, vel etiam alii tradere tutius conservandam" (2, 2, q. 62, ad. 1).

St. Alphonsus, Lessius, Lugo, and others, teach the same.

Julius would sin against charity, or the love he owes his neighbor, if, without more ado, he were to return the forbidden book to the owner, foreseeing the harm that would come to her or to others from its perusal. We say, *"without more ado,"* because if Julius can not refuse to return the forbidden book to its owner, without serious

inconvenience to himself, "*sine gravi incommodo,*" he may return the book at once (Cf. Marc, n. 1020).

4. Since, therefore, Julius may not return the book to its rightful owner, simply upon her demand, and since he may not keep it any longer in his possession without the permission of the Church authorities, he should either get the permission to retain the book in his own possession or he should give it to some third person for safe keeping who has the faculty to retain forbidden books.

Perhaps, in the course of time, the young woman may be prevailed upon to waive her right to the book, and no longer to consider it her own property.

XXI. A PROMISE A BINDING CONTRACT?

Claudina promises her husband, on the day of their marriage, that she will make over to him the sum of three thousand dollars, as soon as he shall have served out the term of his enlistment in the army. In the meanwhile, however, her husband becomes addicted to drink and before the term of his enlistment has expired is a confirmed drunkard. Claudina refuses to keep her promise. She proposes to keep the money herself and use it for her children. Her husband, however, insists that she keep her promise to him and give him the money. What is Claudina to do under these circumstances?

Solution.—Claudina's promise has all the necessary qualities of a binding contract, and it imposes on her, therefore, the obligation of keeping it, in the event of the husband complying with the conditions of the promise. As the case stands, it is not clear what use Claudina's husband is to make of the money once it comes into his possession. If Claudina intended that her husband should be perfectly free in the use of the money for whatever purpose he might choose, and this seems to have been the case, then it is certain that Claudina would never have made the promise had she foreseen the circumstance of her husband becoming a drunkard. The fact that she postponed the fulfilment of her promise until her husband should have completed the term of his enlistment seems to prove that she made this reservation expressly. Since she intended, therefore, to bind herself by her promise only on the condition that her husband should remain a good, decent man, she is, under the circumstances, absolved from all further obligation toward her husband in the matter. For a so-called "contractus gratuitus unilateralis" is considered void when the circumstances of the person or thing have

so changed that it may be taken for granted that from the start the obligation imposed by the contract was not to be extended to this case. The wife may rest perfectly easy in her conscience, and all the more so, since she intends to use the money for her children, whereas, the father by his drinking is prevented from taking the necessary care of his family.

But should not the wife, in the interest of domestic peace, give way to her husband and let him have the money? No; because it is not she, but the husband who is disturbing the peace of the family, and if she gives him the money promised she only lends him new means for indulging his habit of drink and further destroying the peace of the home.

Only in case the conveying of the money to the husband did not give him the free disposition of it, neither now nor later, could the wife be advised to make it over to him. But in that case the husband would have no further interest in the matter. The wife may, if she pleases, renew her promise to her husband, but make its fulfilment depend on his thorough and sincere reform.

XXII. FOR WHAT PERSONS MAY THE HOLY SACRIFICE OF THE MASS BE OFFERED?

Titius, a parish priest, receives from a pious Catholic lady three Mass stipends, with the request that he say three Masses for the following three intentions: One for her brother, who died without baptism, although he was a man of upright life, who feared God and departed from evil; one for an Episcopalian friend, who died in good faith and to all appearances in the grace of God; and one for the soul of her late husband, who was an "excommunicatus vitandus," who at the moment of death gave unmistakable signs of repentance, although on account of the suddenness of his taking off, there was no time to call a priest.

Titius accepted the stipends and said three Requiem Masses, inserting the names of the dead persons in the orations of the Mass. When taken to task for this by another priest, Titius replied that the sacrifice of the Mass may be offered up for all those for whom the sacrifice of the Cross was offered up. As Christ died for all men, therefore Mass may be said for all men.

1. For whom may the Holy Sacrifice of the Mass be offered?

2. Did Titius do right in this matter, and what is to be said about the reason he gave for saying Mass for everybody?

3. Ought Titius to return the stipends?

1. It is evident from the Council of Trent (s. XXII) that Mass may be said for all the *living* who are baptized and living in communion with the Church, as well as for the *souls* in purgatory. There is no difficulty on that point. The difficulty arises when there is question of saying Mass for persons excommunicated, or for heretics and schismatics, or for the unbaptized. May a priest say Mass for any of these latter, whether living or dead?

Considered in itself, and apart from the legislation of the Church, there is no reason why Mass may not be said for any and all persons, since the sacrifice of the Cross was offered for all mankind. But inasmuch as the Mass is an act of public worship, its celebration comes under the laws and discipline of the Church. Hence in regard to saying Mass, the general rule is laid down that Mass may be said for any and all persons, except those for whom the Church by an express and incontrovertible law (for this is *materia odiosa*) forbids it to be said.

2. The act by which a priest offers up Mass for any particular person may be a *public* act, or it may be a *private* act; that is to say, the intention by which the priest applies the special fruit of the Mass, or its ministerial fruit, as some theologians call it, to some private individual may be publicly known or may be private or occult. It is a public act when the priest announces to the faithful that Mass will be said for such or such a person, or when he inserts the name of the person in the orations of the Mass. It is private or occult when the priest accepts the stipend and promises to say Mass for the person named, without making the intention known publicly.

Now with these observations in mind, let us discuss the question of offering Mass for the *living*.

1. For Christians separated from the Church by excommunication, whether Protestants or schismatics or Catholics who have committed an offence for which they have been punished with excommunication, Mass may be applied for their intention privately provided scandal is avoided (cf. Canons 809 and 2262).

2. For Christians who are *excommunicati vitandi* Mass may not be applied for their intention, even privately, except for their conversion (cf. Canons 809 and 2262). *Excommunicati vitandi* are

those persons who are excommunicated by the Holy See by name and in such a manner that the decree or sentence specifies that they are *vitandi* (Canon 2258).

3. The Church allows Mass to be said for an unbaptized person, provided the saying of it gives no scandal to the faithful, and that nothing special is added in the Mass, and provided there be nothing bad or false or superstitious in the intention of the person offering the stipend, if such person be unbaptized (dec. July 21, 1865). Thus Mass may be said for an unbaptized sick person that he be restored to health, or for an unbaptized person condemned to death, that he recover his liberty, or escape the death penalty (Holy Off., March 11, 1848).

Regarding Mass for the *dead* the following rules obtain:

I. Funeral Masses, anniversaries and other public funeral services may not be had for persons who by Canon 1240 are deprived of ecclesiastical burial. These are notorious adherents of heretical or schismatical or Masonic sects or other similar societies; notorious apostates from the Christian faith; persons excommunicated by declaratory or condemnatory sentence; persons who die in a duel; persons who of their own free will committed suicide; persons who ordered their body to be cremated; other publicly known sinners. If they give signs of true repentance before death, they are not deprived of ecclesiastical burial.

II. For persons who are deprived of ecclesiastical burial, except *excommunicati vitandi,* Mass may be said privately taking care that scandal is avoided, for the Code forbids only funeral Masses, anniversaries and other public funeral services. As to the *excommunicati vitandi,* the Code allows Mass for them only while they are living and for their conversion only.

III. It is not lawful, under any circumstances, to say Mass for

those who have died without baptism, "pro defunctis, qui in sua infidelitate ab hac vita decedunt" (dec. Sept. 12, 1845).

IV. Titius did wrong in accepting the stipends, and saying Mass for the intention of the giver as far as the unbaptized person is concerned, and above all he did wrong in mentioning the names of the dead person in the orations of the Mass. For the other two persons he could say Mass privately; the insertion of the name in the oration is a public act.

V. Titius is not bound to return the stipends he received for the Masses, because he did not sin against commutative justice. He did all that he promised to do, when he took the stipends. He sinned against the laws of the Church, by saying the Masses, but he did not sin against the virtue of commutative justice.

XXIII. THE WORDS OF CONSECRATION.

Titius, a priest, somewhat scrupulous by nature, repeats the words of consecration very often in the Mass.* Once he repeated the words of consecration over the chalice, because he had said "Hoc est enim calix sanguinis mei" instead of "Hic est." Another time he omitted the words "mysterium fidei," and therefore repeated the whole form. Another time he repeated the form of consecration over the chalice because in his haste to get through the Mass he said "sanguis" for "sanguinis." And again another time he paused in the middle of the form of consecration for the chalice until he made an act of contrition, because he feared that he might be in mortal sin. Titius's confessor is at a loss as to what judgment he shall pass on Titius.

Titius did wrong in all four instances, where he repeated the words of consecration, and he merits reproof.

1. In the first instance Titius should not have repeated the words of consecration over the chalice in order to correct a grammatical mistake. "Hoc est" has identically the same meaning as the rubrical form "Hic est." It is less correct Latinity, but it is synonymous with "Hic est." "Hoc est enim calix" is not a substantial change of the form of consecration, and does not invalidate the form.

2. The omission of the words "mysterium fidei" does not invalidate the form. If all the words beginning with "novi et aeterni" and continuing to the end "peccatorum" were omitted, the form would have to be repeated, because, owing to the opinion of weighty theologians, the form would probably be invalid. But the same can not be said of the omission of one or two words, and some theologians think that the repetition of the words of consecration would

*See the interesting chapter on this mania in Sanford's Pastoral Medicine.

be illicit, when only one or two words, like "mysterium fidei" have been omitted (cf. Lehmk., II. 129; Genicot, II. 110).

3. Pronouncing "sanguis" for sanguinis" does not give any new sense to the words of consecration. It is evident that it is only a slip of the tongue, a slight accidental error of pronunciation, and that Titius intended just what the correct grammatical form says.

4. Titius did wrong by repeating the whole form because he had interrupted it momentarily in order to make an act of contrition. Slight interruptions which scrupulous priests make in pronouncing the words of consecration do not constitute a moral interruption.

We would add that in Titius's case it is very probable that the consecration of the chalice was already accomplished when he interrupted the form to make an act of contrition (cf. Genicot n. 176, II).

XXIV. CONFESSION BY TELEPHONE?

Case.—A certain priest, by name Paul, had brought into play all manner of artifice that might secure him an entrance into the house of a Freemason, whose wife, Mary, lay grievously ill, but all in vain. He was on the point of despairing when he discovered that the house was equipped with a telephone. Through the assistance of a servant in the house, Paul was enabled to obtain communication with the sick woman, and, having heard her confession over the "phone," gave her conditional absolution.

Now the question arises: Did Paul act prudently? Our answer is in the negative, and for the reasons we will now set forth.

Solution.—Before all else, the penitent must be truly present to the confessor, for an absent person can never be absolved. This we know, in the first place, from the condemnation made by Pope Clement VIII of the following proposition: "Licet per litteras seu internuntium confessario absenti peccata sacramentaliter confiteri et ab eodem absente absolutionem obtinere." And Pope Paul V, approving of Clement's action, declared the condemnation to extend to both members of the proposition, even separately considered. Secondly, we know this from the Council of Trent, where, speaking of the nature of the Sacrament of Penance, it is said: "Christum ita instituisse hoc sacramentum, ut poenitentes voluerit ante hoc tribunal tamquam reos sisti, et per sacerdotum sententiam a peccatis liberari." These words call for no more and no less than the presence of a criminal before a judge.

The penitent, then, must be present to the confessor. But how? Morally or physically? Theologians are our guides in this matter,

and in this they are sure guides, seeing that they all agree in demanding a *moral* presence. What, then, we may inquire, is moral presence? These same theologians tell us, definitely or satisfactorily enough we do not say, that men are morally present to one another when they can speak with the ordinary voice (voce communi), though pitched in a higher key. Again we find some who extend this presence to twenty paces. The limit, however, is reached by those theologians who hold that the required moral presence is had if the confessor sees or by any one sense perceives the penitent, and this in the natural or human way. We now conclude that the presence required for valid absolution is had only when the confessor can perceive the penitent at least by one sense, and in the natural way, i. e., aided only by nature, e. g., the sun, air, etc.

Indefinite as this notion of moral presence may be, we will now apply it to the case in hand. At the very outset, we can say that if this presence is had, it is only by means of the telephone. Through no other medium can Mary, lying ill in her home, be said to be present, either physically or morally, to Paul, who is now in the telephone station. Our question, then, concerns itself only with this circumstance of communication. Assuredly, this communication does not take away the distance, nor does it render those present to each other who are, de facto, at a distance, for at most it is but an efficacious medium of communication between absent persons. This is no new doctrine, for if we ask the general opinion of prudent men on this matter we will receive the same verdict—that the telephone does not create presence, but is only a means of communicating with an absent person. From the mere fact, then, of two persons being in communication it does not follow that they are present to each other, as can easily be seen in the case of communication had through a messenger, or again, by means of a letter.

For fear this notion of moral presence may be, as yet, too indefinite or abstract, we will now take a concrete example of it—to be had, we think, in the case of hearing Mass. To fulfil our obligation of hearing Mass we must at least be morally present, so that we would be reckoned among the number of those assisting at the offering of the Holy Sacrifice. Could this be had through the telephone? Is it likely that any one would admit that a person could hear Mass over the "phone"? Assuredly not. And why? Because the telephone does not supply moral presence. Still St. Alphonsus says: "Praesentia pro absolutione majorem propinquitatem requirit quam pro audienda missa." With this saying before us we can reasonably hold that the moral presence, required by the theologians, demands, if we may be permitted the expression, *a local nearness,* and we likewise contend that one would change the meaning of the words in affirming that Paul and Mary were truly present to each other.

Our next endeavor will be to discover the mind of Jesus Christ anent this matter—the presence required for a valid absolution. Our Lord and Saviour Jesus Christ instituted seven Means of Grace, called sacraments. These seven sacraments, we might do well to note here, are separate entities instituted, each and every one of them, for a different purpose. A sacrament is a sign—an efficacious sign of grace. A sign is made up of two elements—the thing to be signified or symbolized, i. e., the idea of Christ, and the symbol or rite, which in turn is composed of two elements—one real or sensible, called matter, and the other verbal, called the form. Of the seven sacraments two were instituted *in specie,* i. e., Christ not ony gave the Church the idea to be symbolized, but also the matter and form which constitute the symbol. The other five Christ instituted in genere, i. e., He gave the Church the idea to be symbolized, and

left her free to choose apt instruments to signify the idea. The Sacrament of Penance was instituted *in genere.*

The Council of Trent tells us that the Church can not change, in fact, can do nothing regarding the substance of the sacraments, i. e., the idea Christ had in instituting them. If, then, our notion of moral presence is included in the idea of Christ, which is the substance of the sacrament, the Church can not change it one jot or tittle. If, on the other hand, it is contained in the symbol, the Church can, at her discretion and according to the needs of the time, change it. But, *de facto,* she has, up to this, in no way modified it. What we must do, then, is to discover the mind of Christ—His idea in this matter.

We find nothing concerning it in the teaching of Christ, and, moreover, the Church, in her teaching, has not a word. We must go to the theologians and the practice of the Church for a solution. All theologians teach that Christ instituted penance for the remission of all sins committed after baptism—that this was His idea. But what we are especially concerned about is the symbol or rite regarding the determination of which the Church, we admit, was allowed a certain amount of latitude—an apt symbol, one that would clearly represent Christ's idea, made up of two elements, which theologians for convenience's sake have analogically called matter and form. As we have already stated, each of the sacraments has a symbol or rite in which these two elements may be distinguished. That same connection must be had between the matter and form of each symbol, all will admit, and that this connection may be different for different sacraments, is demanded by the fact that the sacraments, notwithstanding a certain more or less artificial uniformity, belong to disparate categories of things. What connection, then, does the Sacrament of Penance require between its matter and form? What

presence is demanded to exist between the penitent supplying the matter and the confessor pronouncing the words of the form? In a word, according to the mind or idea of our Saviour, what presence must exist between Mary, confessing her sins, and Paul, giving her absolution? For an answer to this question we must betake ourselves to the theologians and the practice of the Church.

The theologians have always taught that the penitent should present himself before the confessor as does the criminal before the judge. They have always demanded, for the validity of the absolution, that the penitent be present to the confessor so that the words of the form, pronounced in the ordinary way, should fall upon the penitent in like manner. This the Church also has always demanded, and as we see from her practice, has always obtained. This, then, is the idea of Christ which demands this presence for the validity of the absolution. But this presence is certainly not had through the telephone, as all theologians admit, and no necessity, no matter how great, can supply it, though some theologians, by a queer process of reasoning, come to this conclusion.

The case of these latter theologians would not be altogether hopeless, but would have some probability in its favor, if the human voice was heard through the telephone, for, then, there would be a slight probability of the telephone creating moral presence. In this matter we must have recourse to science. What does she say? Her verdict is that we do not hear the human voice, but only a physical reproduction, or rather, a physical effect of the voice. After a long struggle we may get her to admit that perhaps the human voice is heard, but more than this is required to produce a slight probability of moral presence, for a slight probability is a true probability, and, consequently, demands one good, solid motive. A slight probability is so called not because it has for its foundation

a slight motive, but because it is of a lower grade of a true probability. We hold, then, that a slight probability is not had in this case, and still a slight probability is necessary, even in a case of extreme necessity, for the licit administration of the sacraments.

Because of these reasons we conclude that the presence, necessary for the validity of the absolution, is not obtained through the means of communication called the telephone, and consequently that Paul, in this case, acted imprudently.

XXV. MAY MIXED MARRIAGE EVER BE ADVISED?

Mr. B., a wealthy Protestant merchant, married a Catholic woman, promising that the children should be reared as Catholics. After a happy married life the wife dies, leaving three children under age. B.'s mother was still living, but he did not care to place his children in her care, having promised their Catholic education. Under these circumstances he sought again the hand of a Catholic woman. The latter asked advice of her confessor, and he advised her to accept the offer.

Quaeritur 1. Is it *never* advisable to advise the entering of a mixed marriage? 2. Did the confessor act against the Church *in casu?* 3. What should the priest advise Mr. B. if he should ask for advice in the matter?

Ad 1. The dreadful havoc wrought by mixed marriages, for the individual and for the Church, is sufficiently known. The loss of souls, the inroads made by indifferentism, show as plain as daylight how well-founded the plaints of bishops and clergy from all parts of the Church are, and call to mind the touching words of Pius VIII, with which he accompanied the delegating of dispensation to the bishops of Prussia: *Post haec Sanctitas Sua ad crucifixi pedes provoluta protestatur, se ad tolerantiam praedictam ea dumtaxat de causa adduci seu verius pertrahi, ne graviora religioni catholicae incommoda obveniant.* For this reason it is the priests' sacred duty to refer in their sermons frequently to the evil consequences of mixed marriages, and to raise a warning protest already in the catechetical instructions at school. Yet, notwithstanding, now and again permission will be granted for a mixed marriage, the Church giving dispensation for weighty reasons, the necessary conditions

being observed. The practice of the Church proves this, and Benedict XIV forbids to consider as sinful such a marriage, contracted after valid dispensation. That, however, which is permissible under certain conditions, may under special circumstances be even good and commendable and therefore advisable. This would answer the first question.

Ad 2. Against the Church would act the one who works against the spirit of the Church, who does not observe her laws, and offers occasion for violation of the same. A confessor who would advise a mixed marriage for any ordinary reason would certainly act against the Church. In our case, however, the salvation of three young children is at stake, which may be cared for without peril to the own soul. We are dealing with a man who is so in earnest about their Catholic education, that he for this reason alone seeks again a Catholic for wife. Such an one assuredly will never put any obstacles in the way of his wife's religious practices; this has been proven during his first marriage. On the contrary, there is a well-founded hope that he, too, may ultimately follow the lead of grace. Who would, therefore, censure the advice of this confessor, as against the Church, who recommends to a zealous Catholic such a spiritual work of mercy? A very similar case is recalled to the writer of these lines. A Protestant, upon the death of his Catholic wife, wanted to win a Catholic girl for his bride, so that he might be able to carry out his promise of bringing up his children as Catholics. The confessor advised the girl that she would be doing a good work by accepting the offer. But she declined to marry a Protestant; and no Catholic can blame her for it. What happened, however? The man eventually married a Protestant girl, who thought it queer that she and her Protestant husband should bring the children up as Catholics. The husband at first would listen to

no arguments, he desired to keep his promise. But then the Protestant minister came along, and so harangued the two that finally the children were sent to a Protestant church and school.

The advice of our confessor was certainly not against the interests of the Church.

Ad 3. The foregoing answers the third question. Should Mr. B. come to the Catholic priest and show himself the man we judge him to be from the facts in the case, the priest should help him to find such a Catholic wife, who is likely to undertake the task imposed by this marriage.

XXVI. INQUIRING IN CONFESSION FOR THE NAME OF AN ACCOMPLICE.

Titia, being reprimanded by her confessor for neglecting to make her Easter duty, gave the following reasons to justify herself: She said that she was at Confession last Easter, but that the confessor refused her absolution, because she would not reveal the name of a man high in the city government, with whom she had sinned. The confessor urged that he might be able to reclaim the official, who was a Catholic, if he knew his name; at least, he might be able to prevent him from doing further evil. It is not wrong, the confessor further urged, to make known the hidden sin of another, when there is a sufficient reason for making it known. In the present instance, the good of your neighbor demands that his sin be made known, because he may be reclaimed to the grace of God, or, at least, prevented from repeating this sin. Titia, however, refused to make known the name and was dismissed, without absolution, being requested to come back in another week, which she failed to do.

Titia further confesses that at one time she had the misfortune to commit sin with the priest of her parish, and when Easter time came she went to confession to him because the parish was many miles from any other church and no other priest came to the parish except perhaps at long and uncertain intervals. In order not to attract attention in the small parish by her staying away from Holy Communion at Easter, she had gone to confession. The priest had told her that the one sin she would have to confess again when she had opportunity to see another priest and tell him of the circumstances of this confession. For the rest, he had absolved her and permitted her to go to Holy Communion.

Now we ask:

1. Is it always, and in all cases, forbidden for a confessor to inquire the name of an accomplice, or are there any cases when this is allowed?

2. What judgment is to be formed of the confessor in question?

3. Did the confessor incur any censure?

4. What must the confessor do in the second case?

Ad 1. In answer to the first question, we would say that Benedict XIV. issued four Apostolic Constitutions condemning the practice of inquiring in confession the name of an accomplice.

The first of these Constitutions, *Suprema omnium* was issued in 1745. The second, *Ubi primum,* was issued in 1746. These two Constitutions were first issued to the bishops of Portugal and Algarve. By a third Constitution, *Ad eradicandum,* these two Constitutions were extended to the whole Church. To these the same Pontiff added a fourth, *Apostolici ministerii,* prescribing the mode of procedure against delinquents. In these four Constitutions, the Supreme Pontiff Benedict XIV. condemns the practice of inquiring the name of an accomplice, and he punishes by excommunication, to be incurred *ipso facto,* and reserved to the Roman Pontiff, whosoever shall teach that the aforesaid practice is licit, or whosoever shall defend it, or shall attack the decrees issued against it, or shall twist the same into another meaning; in like manner, also, suspension is decreed, *ferendae sententiae,* against those who inquire the name of an accomplice, or his or her place of residence, or shall inquire such other information in confession that may easily discover the identity of the accomplice, and who shall deny absolution to penitents refusing to give this information. And these penalties are incurred, even though the delinquent may not have committed mortal sin.

The theologians maintain, however, that these constitutions do not include each and every one inquiring the name of an accomplice. They except, therefore, from the penalties decreed in these constitutions all cases in which, according to true and sound teaching (*juxta veras et sanas doctrinas*), it is allowed and even necessary for the guidance of the penitent's conscience, to demand the name of the accomplice.

Some theologians err in determining what cases are to be excepted from the Benedictine censures.

Those err who hold that it is allowed to inquire the degree of relationship in sins of incest. Because the degree of relationship does not add a new species to the sin of incest.

Again, those theologians err who maintain that it is licit to inquire whether a maid servant lives in the same house. Because it is sufficient to inquire whether the occasion is proximate or remote. Indeed, it can not be said that there is any certain grave obligation to tell a mortal sin in Confession, if such Confession will reveal the identity of the accomplice. If, therefore, the penitent is not bound to confess such a sin, by what right may a confessor question him about it?

The case may occur where concealing the name of the accomplice may work much evil, which evil the penitent is bound to prevent, but which can not be prevented except by making known the accomplice to the confessor. In that case the confessor must oblige the penitent to make known the accomplice, and if the penitent refuse, he or she is not worthy of absolution, and the penitent is bound in conscience to make the revelation or otherwise to be judged unworthy of absolution. But it is very desirable that the identity of the accomplice be revealed to the confessor, not in Confession, but outside of it. For if the revelation be made outside of Confession,

then the case is no longer a case of the confessor inquiring the name of an accomplice, but of a penitent revealing the identity of his accomplice, because he is bound to do so by a higher law.

Ad 2. The conduct of the confessor in this case in requiring the penitent to discover the identity of the accomplice is reprehensible. It is in direct opposition to the Constitutions of Benedict XIV., which expressly forbid inquiry as to the name of an accomplice, under pretext of correcting him. Nor did the good that the confessor hoped to do, after learning the name of the accomplice, justify him, because it did not fall within any of the cases which require the revelation of an accomplice.

The confessor is likewise blameworthy for sending Titia away without absolution; but, it is not evident from the case, that he denied her absolution, and told her to come back, in order to induce her to make known her accomplice.

Ad 3. The confessor did not incur any censure; for the Code has no censure against the priest who demands the name of the accomplice, nor does it demand that the confessor be denounced. His action, however, is reprehensible, and if the penitent complains to the bishop, the priest is liable to penalties at the discretion of the bishop.

Ad 4. On the one hand, the person who had sinned with the priest could not be obliged to an extraordinary means of going to confession elsewhere, on the other hand there was the duty of receiving the Sacraments during Easter time; and if one should urge that the person might wait even after Easter to go to the Sacraments, still it may be that on account of the circumstances of the place his staying away from the Sacraments would attract attention. In cases of this nature the priest, according to the teaching of quite a few theologians, would have acted in this way

properly, and given the correct instruction to the penitent, and he himself would be free from any censure. The second confessor to whom the penitent comes to confession should not demand a repetition of the other sins, for it is lawful to follow the opinion that the priest in those circumstances could validly and licitly absolve the penitent directly from the other sins, and indirectly from the sin of complicity. The confessor to whom the priest confesses should not consider him as having fallen into the excommunication *specialissimo modo* reserved to the Holy See, for as long as a good and probable opinion is in his favor, nobody has a right to assert that he violated the law.

XXVII. A CASE OF RESTITUTION.

Some time ago a fire broke out in a store in which John is employed as a clerk. To increase the amount of damages which his employer would receive from the insurance company, John, together with another clerk named Donald, testified that a large quantity of silk goods and laces had been destroyed by the fire, when, in fact, they had been removed by the proprietor and were intact. In the meantime the storekeeper has disposed of his business and removed elsewhere. Donald has a good position in a large New York house, but John makes scarcely enough to keep him.

All this John makes known in his Easter confession. He knew at the time that he made the statement to the insurance agents about the silk goods and laces that it was a false statement, but Donald's testimony alone would not have sufficed to recover the supposed damages, and so he was induced to make a joint statement with Donald. He did not profit by it himself, nor does he know how much money the storekeeper got from the insurance people for the silk and laces, except that it was hundreds of dollars. When questioned further by the confessor, John admits that there is no probability whatsoever, that either the storekeeper or Donald will ever make any restitution, neither of them being Catholics. Under these circumstances, the confessor holds John to restitution in the full amount. But John has nothing wherewith to make restitution, neither does he know the exact amount to be restored, nor the parties to whom restitution is to be made, since the old company has gone out of business and a new concern has bought up its interests. Under these circumstances the confessor volunteers himself to find out how much money was recovered from the insurance people for the silk

and laces, and to what individuals restitution must be made, and to inform John later of the results of his inquiries. In the meantime, however, the confessor grows anxious about the course he is taking in the matter, and asks whether he is acting rightly. Theoretically, there can be no doubt of John's obligation to make restitution, but only in case the storekeeper refuses to restore, in which case John is held jointly with Donald, because Donald's testimony, by itself, did not suffice to prove the supposed damage. Therefore, John is liable, together with Donald, for the whole amount, but only in the second instance, that is, in case the storekeeper does not make good, in which case John may recover from the storekeeper. But Donald refuses to pay his share; therefore, John is liable for the full amount, but with the right to recover from Donald, Donald's half of the amount restored. In principle, therefore, the decision of the confessor is correct. In practice, however, we are obliged to take a different view of the confessor's conduct.

In the first place, the confessor acted imprudently in undertaking to find out for John the exact amount of money paid by the insurance company to the storekeeper for the supposed destruction of the silk goods and laces, and to what persons this money should be restored. There is always danger of breaking the seal of confession in making such inquiries. Moreover, even supposing the penitent gives the necessary permission to make the inquiry, the undertaking is odious in itself, and may lead to embarrassing complications. There is no need, in the present instance, of such an investigation, because John has no means wherewith to restore. There is question of making restitution to an insurance company. These companies are operated and secured by the premiums paid by the persons insured. The rate of the premiums depends on the risk the company takes in insuring, the risk being computed on the average frequency of fires, as

shown by the records of insurance companies, no account being taken whether the fires are accidental or of incendiary origin. The company endeavors, by means of restrictive clauses and thorough investigation into the origin of each fire, to protect itself against fraud. However, it can not guard against every deception practised by the insured. Therefore, in fixing the rate for insurance the company considers only the possible damages it may have to pay. Hence it follows that the carriers of fire insurance policies are themselves, to some extent, the sufferers when unjust fire damages are allowed, because they pay a higher premium rate in consequence of fires of incendiary origin. If no fraud were practised on insurance companies by holders of policies in the same, the rate for insurance in such companies would be much lower than it is. It is but just that the policy-holders should be indemnified for unjust damages they are thus indirectly made to suffer. But the number of policy-holders is so great that the amount of restitution to be made to each policy-holder for damage done him by any particular fire is inconsiderable. Moreover, their identity is unknown. Therefore, the poor may be substituted for them and restitution made to the poor. In this view, and it is well founded (cf. Lehmkuhl, I. 11, 34), John's case may be easily disposed of. John is actuated by a sincere desire of making restitution, but is prevented by his poverty. The confessor may tell him that he may give alms to the poor by way of restitution, and as he is poor himself, he is included in the number of those who may benefit by the alms. In this way John's conscience is set at rest. But the storekeeper and Donald are still bound to restore.

XXVIII. THE PAULINE PRIVILEGE.

Case submitted:

A certain unbaptized lady was married to an unbaptized man. They separated before the civil court. The lady got married again, and wished to join the Catholic Church with her husband. Not having been informed about her former marriage to the infidel, and finding them sincere and well disposed, I baptized them and married them.

I did it because, 1, they live in the mountains, among the Mormons, and everything was prepared when I arrived there; 2, because I thought that she had the privilege by the "Casus Apostoli," although "interpellatio non facta fuit." Our bishop says that he doubts whether in his faculties he has the power to dispense in the "interpellatio partis infidelis." Do you know whether the Holy Father gives this power to the bishops in this country? Some say that they have the power.

It would be too bad, not only for that couple, but for numerous relatives, who desire to enter the true Church. In case the "interpellatio" is necessary "quoad validitatem," must I procure a dispensation "in radice"?

Solution:

The case here submitted gives rise to the following questions:

1. Is the "interpellatio partis infidelis" required "ad validitatem" or only "ad licitatem novi matrimonii"?

2. Have the bishops of the United States faculties to dispense "a facienda interpellatione"?

3. What ought the priest to have done as soon as he learned of the first marriage?

4. What is to be done now?

1. Is the interpellation required for the validity of the new marriage, or only for its licitness?

Answer.—The theologians are not agreed as to whether the interpellation of the unbaptized party is required for the validity of the new marriage, or only to make it licit. The greater number favor the opinion that the interpellation is of divine command—juris divini—and that its omission, without Papal dispensation, makes the new marriage invalid. Card. D'Annibale (l. III. n. 476) says to the question "utrum interpellatio necessaria sit ex jure divino? Sententia longe communior affirmat."

The theologians who hold that the interpellation is required for the licitness only of the new marriage, contend that the validity of the new marriage, contracted without the interpellation and without a Papal dispensation, will depend, "ex jure divino," on the willingness or unwillingness of the unbaptized party to be converted or to cohabit in peace, etc. The new marriage of the baptized party will be valid or invalid, according as the subsequent investigation shall prove that the unbaptized party to the first marriage was willing or unwilling to be baptized or to dwell with the Catholic party without sin, etc.

These theologians hold that the interpellation is a "medium dignoscendi utrum de facto verificetur casus apostoli, quemadmodum inquisitio de morte conjugis requiritur ad licitam novi matrimonii celebrationem, sed ejus omissio non efficit novas nuptias esse nullas et irritas".

Thus Ballerini-Palmieri (VI. n. 619), "Ego vero nescio, cur et in casu nostro, non sit pari modo arguendum (as in the case of establishing the fact of the husband's or wife's death, before contracting a new alliance), nempe, certe eum peccare qui, non interpellata

parte infideli, novum contrahit matrimonium; sed valide contrahere, si infidelis seipsa cohabitare aut converti nolebat, invalide, si consentiebat conversioni aut cohabitationi." Indeed, there are some theologians who argue that the omission of the interpellation would not even render the new marriage illicit, if the unwillingness of the unbaptized party to be converted had been proven for certain in some other way. But whatever may be said of the probability of these opinions which deny the need of interpellating "quoad validitatem novi matrimonii," it must be admitted that the greater number of theologians hold that the interpellations are "juris divini," and their omission, without Papal dispensation, renders the new marriage invalid. Moreover, innumerable decrees and answers of the Holy See prove beyond doubt that it is never licit to omit the interpellation without the permission of competent authority.

In the year 1884, the Bishop of Portland consulted the S. Congr. de Prop. Fide on the following question: "Utrum, ubi agitur de dissolutione matrimonii in infidelitate contracti . . . et ubi pars infidelis divortio legali a viro soluta, ad alias nuptias convolavit, interpellatio omnino necessaria esset, etiam cum sequentibus maximis incommodis, scilicet, 1, mulier infidelis interpellationem ut sibi injuridam reputat; 2, vir ejus novus indignatus audit interpellationem et si viva voce interpellatio fit, nuntius aliquando non sine periculo munere suo fungetur; 3, ubi vir aut mulier divortio solutus ad aliud, ut aiunt, matrimonium jam transivit, non posset ad priorem sponsum redire: 'obstat enim lex civilis.'"

To this question the S. Congr. de Prop. Fide replied as follows: "Ad mentem. Mens est, quod neque divortium, neque secundum matrimonium civile sunt sufficientia ad eximendum ab obligatione interpellationis. Quatenus vero saltem summarie et extrajudicialiter constet interpellationem vel impossibilem vel inutilem fore, utetur

Episcopus facultate dispensandi, si ea pollet; sin minus, supplicandum sanctissimo pro facultate pro decem casibus. SSmus, approbavit et facultatem concessit" (G. P. F. 1360). Feije (Disp. n. 493) says: If the baptized party contract a new marriage, without interpellating, and without procuring a dispensation from the interpellations, then the baptized party sins grievously. The validity, however, of the marriage, in the opinion of many theologians, will depend on the subsequent consent or refusal of the unbaptized party to be converted and to cohabit peaceably, etc. This opinion, however, continues Feije, does not agree with the decisions of the S. Congr. de Prop. Fide (March 5, 1816), which Congregation has declared, in some particular cases, a marriage invalid which was contracted without first interpellating or procuring a Papal dispensation.

Little, if anything, can be concluded from the rulings of the S. Congregations concerning the necessity of interpellating on pain of invalidating the new marriage. The decisions of the Sacred Congregations refer to particular cases, and they purposely refrain from using terms that might be construed as settling a general point in dispute among the theologians. Thus the Propaganda was asked, March 5, 1816, "utrum interpellatio sit de jure divino, atque adeo necessaria, ut ea neglecta, nullus plane habeatur locus dissolvendi matrimonii" and returned this answer, "se noluisse ex professo huic petito respondere," etc.

There is no foundation for the categorical statement that "outside of the case of a Papal dispensation, the interpellation is always required, jure divino, and that on pain of invalidity of a new marriage" (Smith, Marriage Process, n. 305).

The Code of Canon Law in Canon 1121 has settled the controversy, as far as the necessity of the interpretation for the validity of the second marriage is concerned, saying, that before the con-

verted party can validly contract a new marriage, he must make the interpellation to the unbaptized party, unless the Holy See dispenses from it.

Canon 1125 contains concessions in the matter of interpellation which had been granted to particular missionary countries, and which the Code now extends to all other countries for the cases mentioned in the respective Papal Constitutions referred to in Canon 1125.

The Constitution *Altitudo* refers to marriages of heathens who practice polygamy. If the converted husband does not remember which of his several wives he married first, he may take any one of them and contract marriage with her according to the Christian rite.

The Constitution *Romani Pontificis* deals with a case where a heathen has taken and dismissed several wives and married others. Finally he is converted and one of the wives he actually has is also converted. His first and only lawful wife has either been dismissed by him, or if he still lives with her, it was not she that became a Catholic but one of the other wives. The Holy See allows the man to continue to live with the one who was converted, having, of course, dismissed all the others.

The Constitution *Populis* gives faculties to the bishops, pastors and priests of the Society of Jesus to dispense from the interpellation in the cases of converts in Angola, Ethiopia, Brazil, and regions of India, who before Baptism were married and whose partners in marriage were carried off into slavery, or otherwise separated, so that they could not easily be interpellated, or, if interpellated, did not reply within the time fixed for the answer, so that they may lawfully marry a Catholic of any Rite. If afterwards it should become known that the other party had become a Catholic before the second marriage took place, or that he had had no chance

to reply to the interpellation, the second marriage is nevertheless to be considered firm and valid.

Second Question.—Have the bishops of the United States faculties to dispense from the interpellations? They have no general faculties. Some individual bishops may have faculties to dispense from the interpellations for a certain number of cases, but there are no general faculties given to all our bishops as a body. Smith (Marriage process, n. 302) says: "Bishops in the United States have no such Papal delegation, at least generally speaking, and consequently recourse is to be had to Rome in each case with us, as is also plainly intimated by the S. Congr. de Prop. Fide, Instr. Causae Mat. sect. 45, Append. III. Pl C. Balt."

The words of the *Instruction* are as follows:

"Si matrimonium acciderit cum parte catholica post baptismi susceptionem, erit inquirendum, utrum praecesserit conjugis adhuc infidelis canonica interpellatio, aut saltem a legitima potestate fuerit super eadem interpellatione dispensatum. Quatenus constiterit de facta interpellatione aut de illius dispensatione, primum matrimonium nequit amplius constituere vinculum secundum connubium irritans; quatenus vero neque interpellatio, neque ejusdem dispensatio praecesserit, primum matrimonium obstabit quidem secundo, sed Ordinarius judicium suspendere debebit et casum, cum omnibus suis circumstantiis ad S. Sedem remittere, quae ipsi Ordinario quid faciendum sit, indicabit." Putzer (Comment. in Facult Apost. n. 130) says: "An hac facultate etiam nostri Episcopi (U. S. A.) gaudeant, publice non constat."

Third Question.—What ought the priest to have done as soon as he learned of the first marriage? In the first place he might have prudently suspected the possibility, if not the probability, of some such previous marriage and divorce under the circumstances, since

such things are so common in the United States, and elicited the information in time to make the interpellations or to procure a dispensation from the proper authorities. Of course, this was impossible at the moment when the priest did, as a matter of fact, learn of the previous marriage and divorce. The parties live far away in the mountains. They are living together in good faith as husband and wife. They are to be baptized and then married. Everything is ready. The only practicable course open to the priest would seem to be to leave them in good faith and marry them and then procure a dispensation from the interpellations and have them renew their consent.

There is ample reason, under the circumstances, to petition the Holy See for a dispensation. The second husband is a Catholic now, and the parties are in good faith, and there is no hope of the wife ever returning to the first husband, from whom she is legally divorced and who is unbaptized.

The effect of this Papal dispensation from the interpellations is "ut matrimonium partis neo-conversae cum altero fideli sit validum et omnimoda firmitate gaudeat, etiamsi postea constaret de bona dispositione compartis infidelis, momento quo data fuit dispensatio, imo, etiamsi probaretur hoc ipso momento, partem quae credebatur infidelis, jam fuisse baptizatum" (De Becker, de Mat. p. 456).

Fourth Question.—What is to be done now? Leave the parties in good faith and procure a dispensation from the interpellations and then make them renew their consent. In this case, according to a recent reply of the Congr. of the Holy Office, there is no "sanatio in radice," "in hoc casu non dari locum dispensationi in radice," etc. (Jan. 17, 1900). Consequently, after procuring the dispensation, the parties must be married over again, that is, renew their consent in the presence of the parish priest and two witnesses.

XXIX. MAY A PERSON BE DISPENSED FROM HEARING MASS ON SUNDAYS, IF GOING TO MASS BECOMES A PROXIMATE OCCASION OF SIN?

The case is this: One Robert Smith, a farmer and the father of several children, is greatly addicted to strong drink, and in consequence his farm is heavily encumbered. In other regards he is a good father, and during the week keeps quite sober and is industrious and economical. But when he comes to town on Sundays to hear Mass he can not resist the temptation to visit the saloons, where he spends the entire day in drinking, and returns home Sunday evenings regularly in a sad state of intoxication. In this way he becomes, every Sunday, a source of scandal for the whole congregation, and sinks his family into ever deeper misery.

He means well, however, and is thoroughly conscious of his miserable condition, and, in utter dejection, he goes to Confession and says: "Father, I don't know what I shall do to save myself from this fatal weakness. I have tried repeatedly all the means you recommended. I have prayed. I have firmly resolved to return home immediately after Mass. I have even requested a friend of mine to accompany me, etc., but all to no purpose. Every time that I come to town I am drawn irresistibly to the saloon, and in spite of all my good resolutions I seem to be utterly powerless in the presence of the temptation. Now, I sometimes think to myself, it would be better not to come to Mass at all on Sundays than to come to Mass and get drunk. I think it would be better for me if I remained at home altogether on Sundays for a while, until I get this passion for

drink under control. But I should like to have your advice in the matter."

"Very good," answers the confessor. "If you think that staying at home on Sundays is the only means left you for overcoming the drink habit, I will dispense you from hearing Mass on Sundays. Remain at home for some Sundays, and endeavor to get control of yourself in this matter. Then come to Mass again. In the meantime, however, say your Mass-prayers at home."

Question.—Did the confessor act rightly?

Answer.—We think that he did, and for the following reasons:

1. Smith is here in the presence of two conflicting duties. On the one hand, he is bound to avoid the proximate occasion of sin, which, in the present instance, is his attendance at Mass on Sunday. On the other, he is bound to fulfil the precept of the Church, namely, to hear Mass on Sundays and holydays of obligation. But since the obligation of avoiding the proximate occasion of sin is imposed by a law of nature, absolute and negative, it takes precedence over the obligation of hearing Mass on Sunday, which is imposed by a law of the Church, hypothetical and affirmative. For this reason alone, Smith may be dispensed from the obligation of hearing Mass on Sunday, since attendance at Mass becomes for him, *per accidens,* a proximate occasion of sin.

2. A precept of the Church, at least in so far as it is of an affirmative character, in general does not oblige *"sub gravi incommodo vel damno aut proximo gravis damni periculo."* But in regard, particularly, to hearing Mass, St. Alphonsus says: *"Excusat ab audienda missa quaevis causa mediocriter gravis, sc. quae involvit notabile aliquod incommodum aut damnum in bonis animae vel corporis proprii aut alieni"* (Lib. III. n. 324).

These passages excuse Smith from hearing Mass, for, as things

stand at present, attendance at Mass is for him a *"proximum gravis damni periculum,"* which involves a *"notabile damnum in bonis animae"* for him. Under the circumstances, therefore, the confessor acted rightly in dispensing Smith from attendance at Mass—that is, in declaring authoritatively that for the present there is no obligation for Smith to hear Mass on Sundays or holydays.

The circumstance that the *"occasio proxima"* and the *"proximum gravis damni periculum"* are of Smith's own creation does not oblige him to hear Mass, for St. Alphonsus says expressly in regard to this: *"Excusat etiam impotentia illa, cui antea causam cum peccato dedisti, dummodo de hoc vere doleas"* (Lib. I. n. 176).

It is true, indeed, that Smith, owing to his excessive indulgence in drink, has created for himself an *"impotentia moralis audiendi missam."* But as he is heartily sorry for this, it is not right, in this particular instance, to hold him to the consequences of his fault, unless we wish to make the evil even greater than it is.

Here another question may be asked: Is it lawful for the confessor to allow Smith, who is an *"occasionarius"* and *"recidivus,"* to remain *so long a time* away from Mass? Undoubtedly it is, provided only that the confessor knows for a certainty that Smith has diligently employed all the other means recommended by him for avoiding the proximate occasion, and uprooting the bad habit, especially the frequent reception of the sacraments, and, nevertheless, has always fallen back into the old sin. In this case the confessor must use extreme measures, since it is an axiom in morals that the *"occasio moraliter necessaria"* (and such is the case under consideration) must be given up *"cum quocunque damno vel incommodo, si poenitens etiam adhibitis mediis, eodem modo relabitur."* The confessor, therefore, has the right, since all ordinary means have failed, to have recourse to extreme remedies; that is, to dispense the

penitent from attendance at Mass on Sundays for such a period of time as shall seem to him necessary for the removal of the proximate occasion. Smith may be protected against the danger of becoming careless about hearing Mass on Sunday by being obliged to perform some special acts of devotion at home on such days. Although a person is not obliged to perform any special devotions or acts of piety, or to hear Mass on weekdays, if he is prevented from hearing Mass on Sunday, still, as Lehmkuhl says (I. n. 567), *"qui per totum annum impediretur quominus diebus Dominicis et festivis sacro interesset, aliquoties id supplere deberet diebus ferialibus (e. g. ter. quaterve)."*

In this case the confessor should not neglect to hold Smith to some special acts of devotion on Sundays, v. g., to the recitation of the Rosary, because it is Smith's own fault that he is not in a position to hear Mass on that day.

Another question suggests itself in connection with this case, namely: Will not this dispensation, which is granted to Smith to absent himself from Mass on Sundays, cause grave scandal in the parish, especially when it becomes known that Smith has been dispensed from hearing Mass for such a long period of time? To this question, Lehmkuhl replies as follows: *"Si propter meam actionem, proximo difficile erit a peccato abstinere, proportionate gravis causa ex mea parte requiritur ut agere possim; igitur gravior, quo major est alterius difficultas majusque peccatum"* (I. n. 633). It is very likely that Smith's absence from Mass on Sundays will cause scandal among the members of the parish. Nevertheless, the reason for permitting the scandal is so grave that there is no occasion for any qualms of conscience. The penitent may also forestall the scandal in large measure by stating openly his reason for staying away from Mass on Sundays, saying that he is acting on the advice of his con-

fessor, and as a last means of conquering his appetite for strong drink. Nor does such a statement contain any personal defamation. On the contrary, the good will and sincere desire to reform revealed by such an admission will contribute largely to repair the scandal given in the past.

XXX. CONCERNING THE PERUSAL OF PRIVATE REVELATIONS.

1. There are many persons, especially women endeavoring to lead a holy life, who occupy themselves a great deal with so-called revelations made to pious persons, even to the exclusion of all other spiritual reading matter. Sometimes such persons study the revelations made to some particular saint, drawing all their spiritual nourishment from them; then having their appetite whetted by the perusal of one book of this kind, they eagerly devour anything of the same nature that they are able to lay hold of. They believe in these revelations as firmly as they believe in the Gospels and are strongly disposed to brand as heretics, or at least as suspects, all who do not put the same faith in them as they do themselves. This disposition alone is sufficient to prove that the perusal of these private revelations is not a healthy, spiritual exercise for all indiscriminately, and it becomes necessary from time to time to instruct the faithful on this head.

2. That there may be, that there have been, and that there are at present revelations made to private individuals is beyond question. We are speaking, of course, of revelations made to holy and devout persons, which have been investigated by the Church and declared to contain nothing against faith or good morals. No positive ecclesiastical approbation is ever given to such revelations.

3. When the Church revises and approves revelations and visions in this sense, all she does is to certify that these visions and revelations contain nothing against the "rule of faith," the "regula fidei"; so that the faithful may believe them without injury to their faith (pie creditur) and use them as a guide to conduct without fear of

believing or doing anything unauthorized by the Church. Where the Church has thus given her approval to any particular private revelation, it is no longer permitted to ridicule or to despise it. "Fas non est," says Card. Franzelin, "tales revelationes contemnere" (de div. trad. 22). To do so were to fail in the respect due to the Church. But not to believe the revelation is no sin against the obedience we owe the Church. For the Church, by her approval or quasi-approval of these revelations, has no intention of obliging the faithful to believe them. Whoever believes in them, does so "fide humana," and not "fide divina," at least not "fide divina Catholica."

"In spiritual things," says Catherine Emmerich, "I never believed anything except what was revealed by God and proposed for my belief by the Catholic Church. What I saw in visions I never believed in this way."

4. The body of revealed truth, necessary to salvation and bearing the seal of infallibility, was completed and closed, once for all, by the teachings of Christ and the apostles. When the Church defines a new dogma, she simply declares authoritatively that it is contained in the teachings of Our Lord and the apostles. Just as private revelations do not bear the seal of infallibility, so neither do they bear the mark of inerrancy. There is no divine inspiration guaranteeing the correct recording of private revelations, as is the case with the Holy Scriptures, even though the fact of the revelations has been established.

Private revelations are exposed to a threefold danger. The understanding may err in receiving the revelation. The memory may fail in recording orally or in writing the contents of the revelation. The tongue may err in its effort to clothe the revelation in human words.

Moreover, as Bened. XIV remarks, notions and ideas acquired pre-

vious to the revelation may be confounded by the person receiving the revelation with the things learned in the revelation, and thus the saints have sometimes considered things to have been revealed to them which were in nowise revealed. Hence the contradictions in different revelations.

5. The supernatural communication, therefore, as well in its reception as in its transmission, may be unwittingly falsified. The Holy Scriptures alone are preserved from such falsifications. And thus it happens that the private revelations of different holy persons contradict one another openly, and in many things.

6. All that the Church says, therefore, when she lends her approval to the private revelations of the saints or other holy persons, is that these revelations may be believed "fide humana," and that they are adapted and may be used for the edification of the faithful.

The declaration of Bened. XIV does not contradict this: "When the Church has examined and approved these visions, no one may any longer doubt their supernatural and divine origin." The Pope speaks only of their origin, and not at all of their contents, nor of their correct reproduction. And even a refusal to believe in their divine origin would not be a sin against Catholic faith.

7. After these theoretical remarks let us add a few words of a practical nature. The reading of these visions and private revelations is in nowise adapted to the needs of ordinary people, even though they may have correct notions about the credibility of private revelations. Many of these revelations are beyond the needs and the intelligence even of persons already far advanced in the spiritual life, and are often clothed in language quite unintelligible. And herein precisely lies a new source of anxiety, because a new danger, namely, the danger of understanding the revelation in a wrong sense, which may easily lead to positive error and sin against the "rule of faith."

8. Besides the danger just mentioned there is another, namely, the danger of a one-sided and an imperfect direction in holiness, and of laying great stress on trifles and things of secondary importance. But what is worst of all is that the reading of these revelations gives rise to secret spiritual pride and makes silly pious people, for it is such persons that are most addicted to this kind of reading, that imagine themselves farther advanced in the ways of perfection than others and think that they know more about matters of faith and morals than most other people, even more than the priests themselves.

9. It may cause some surprise if we add a warning for members of religious orders, especially of women. As a general rule, it is not advisable to make use of histories of private revelations, made to pious and holy persons, for general community reading. And those in authority in religious communities should be very slow to allow individual members of the community to make use of the same for their private reading. Women in religious orders who are endeavoring to lead holy lives are more apt to evince a weakness for what is extraordinary than for what is ordinary in their quest of perfection, than their sisters in the world. They prefer the revelations of St. Brigitta or of St. Gertrude to an ordinary introduction to the spiritual life. And it is precisely those who are by no means firmly grounded in the spiritual life who hanker after what is higher before they understand or put into practice the most ordinary and necessary requirements of spiritual growth. In the case of religious the evil effects of this kind of reading are more pronounced and more disastrous than in the case of lay people, and they sometimes create disturbance and division in an entire convent.

10. Some may think these remarks and warnings too severe and even exaggerated. And such indeed were the case did we apply

them, *a priori,* to all private revelations. They hold good only for those who read indiscriminately, and without selecting, especially revelations made to holy persons in times long gone by, and which are profoundly mystic, not to say apocalyptic in their presentation.

Simple books, and books that may be readily understood, like the visions of Catherine Emmerich concerning the life and sufferings of Our Lord and His Blessed Mother, are much to be preferred to others, and we would even recommend them.

XXXI. DISPENSATION FROM IMPEDIMENTUM IMPEDIENS ARISING FROM BETROTHAL.

John contracts valid espousals with Mary, but afterward falls in love with Martha, and, without any just cause, deserts Mary. When he goes to the parish priest to get married to Martha, Mary puts in her claim, and the priest sustains her right. Then John and Martha go before a magistrate and contract civil marriage, which is invalid by the decree *Ne Temere* and by the law of the Code.

After some time, when they have two children, they wish to become reconciled with the Church, and also to legitimatize the children; so they ask the parish priest to try to persuade Mary to give up her right, but the attempt is vain. The worried pastor is telling his troubles to a neighbor, and is surprised to hear that the matter can be fixed by a dispensation from the Sovereign Pontiff. He doubts whether the Roman Pontiff can give a dispensation hurtful to the interests of a third party, so he submits the following questions to a theologian:

1. Whether and for what cause can the Roman Pontiff dispense from an *impedimentum impediens* arising from valid betrothal?

2. Whether in the present case there is sufficient ground for a dispensation?

3. Whether John has still any obligations to Mary?

Answer.—*Ad* 1. Since it is a question of the Roman Pontiff in his public capacity, we can infer from fact to right. Now the Roman Pontiff does dispense in such cases. Therefore, he has the right.

Moreover, *"cui licet quod est plus, licet utique quod est minus."* Now the Pope can dispense in the case of a marriage *ratum non consummatum.* Therefore, *a fortiori,* he can dispense from these lesser impediments.

It is true that in betrothal there is a right acquired by the other party, and the difficulty is: How can the judge, as defender of the law, act prejudicially to the rights of this other party? It must be remembered, however, that the Pope is Chief Legislator as well as Chief Judge. As Chief Judge, he must urge the observance of the law. But as Chief Legislator, he can undoubtedly dispense from the law he has made; for the law-maker can dispense from the law.

However, he can not do so arbitrarily and without cause. The gloss *in can. l. dist. 22 in Decret. v. injustitiam* says, *"nec Papam debere uni detrahere ut det alteri nisi subsit causa."* It therefore requires a grave and just cause for the Pope, although he is Chief Legislator, to use this power. If the engagement contract was made after April 19, 1908, it had to be made in writing signed by the parties and two witnesses, or by the parties and a pastor, otherwise the Church attaches no binding force to it, neither in conscience nor in the public forum. Since the promulgation of the Code, May 19, 1918, a valid engagement contract is no longer an impediment to marriage. Canon 1017 states that though a valid engagement is broken without just cause, the injured party has no right to institute action in an ecclesiastical court for the purpose of obliging the other party to the marriage. An action only for damages remains to the person injured by unjustifiable breach of the engagement.

Ad 2. There is no doubt that John did Mary a serious wrong when he deserted her, and committed a grave sin. But should he be compelled to leave Martha and her two children and marry

Mary? No one can sincerely propose such a solution. Suppose that after he contracts Christian marriage with Mary, the civil power were to intervene and order him to restore Martha to conjugal rights. It is evident that there are quite sufficient causes for granting the dispensation if there were need of a dispensation. And as a matter of fact, in our own times the Pope granted dispensations of this sort.

Ad 3. John must make compensations for any evils which Mary has sustained by his breaking the engagement.

It was a disputed question whether the engagement held if Martha died before Mary. Some held that the betrothal remained in suspense, and bound once more if the wife died; others that it became altogether extinct. Arguments were drawn by both sides from the texts of the law, which did not seem to be clear on the question. By the law of the Code the question has now become superfluous, since no right to demand marriage is given by the Code to the injured party, who can claim only compensation for damages suffered.

XXXII. DOUBTFUL CONSECRATION AND ITS CONSEQUENCES.

Cajus, a young priest, is to say the solemn Mass on Holy Thursday. Because a large number of people wish to receive Holy Communion at that Mass, Cajus takes a great many small particles and folds them in an extra corporal and places them on the altar, beside the chalice, and on the regular Mass corporal. At the offertory and at the consecration, he unfolds the corporal so that he may see the particles, and he directs his intention to them. Shortly after the consecration, he sees a small particle lying on the floor beside him. In his confusion he picks it up quickly and lays it on the consecrated particles beside the chalice. After a few moments, however, he begins to doubt whether the particle was consecrated or not. It may have fallen to the floor just before the consecration. Still, he thinks he would have noticed it sooner had it fallen before the consecration. He does not know what to do.

If the particle was not consecrated, he can not distribute it with the others without committing an act of material idolatry, and depriving some one of the communicants of Holy Communion. He can not distinguish this particle, however, from the others, and the people are waiting to receive Holy Communion. Cajus asks the Mass-server if he knows when the particle fell to the ground; the Mass-server does not know. In this dilemma the young priest distributes all the particles in Holy Communion.

Now we ask: 1. Was it right to use *two* corporals at the Mass? 2. What is to be said about Cajus's mode of procedure with regard to the doubtful particle?

1. In the Rubrics of the Mass, mention is made of only *one* corporal to be used at Mass, namely the one that is spread under the

chalice and on which the large host is laid. If small particles are to be consecrated during the Mass, they are to be laid on this corporal, "ante calicem," or they are to be put into a second consecrated chalice, or other holy vessel, which is placed on the corporal of the Mass behind the chalice of the Mass, *"retro post calicem"* (Ritus cel. Missam. ii. 3). A second corporal is unknown to the Rubrics. Therefore, when many small particles are to be consecrated, a ciborium should be provided, or a second chalice. In case there is no ciborium or chalice, the small particles should be placed on the Mass corporal, in front of or on the side of the chalice. The use of a second corporal, to hold the small altar breads, is contrary to the Rubrics, and could be justified only in a case of real necessity, when no ciborium or second chalice is to be had, and the small particles are too numerous to be placed on the Mass corporal. Even in this case, it were better to make *one* corporal out of the two, by unfolding both on the altar, and allowing one to overlap the other a few inches. This would be much better than folding the small particles in a second corporal and placing them thus folded on the Mass corporal.

2. Regarding Cajus's conduct, we remark:

1. When Cajus picked up the small particle from the floor, he should have kept it separate from the other particles, and consumed it *before* or *with* the first ablution. That was the only correct thing for him to do.

2. Once the doubtfully consecrated particle was mixed with the consecrated particles, and its identity lost, Cajus should not have given Holy Communion with any of the particles, but should have put them all into a ciborium or chalice and reconsecrated them all, *"sub conditione"* at another Mass.

3. If that was impracticable, as it was on Holy Thursday, be-

cause there would be no other Mass on that day, Cajus should have removed some of the small particles from that place where he laid the doubtful host and placed them in a ciborium to be consecrated at another Mass, *"sub conditione,"* and then given Holy Communion with those that remained. For, in picking up the particle from the floor, and placing it with the others, Cajus could be morally certain just about where he placed it, and by removing the particles from that particular region, he would be morally sure that he had removed the doubtful particle. If the consecrated particles remaining did not suffice for the faithful, they might be broken. The inconvenience of breaking them would not be a sufficient reason for giving Holy Communion with doubtfully consecrated particles.

4. Strictly speaking, there remains still another way of removing the danger of material idolatry and doubtful Holy Communion. To give the communicant two sacred hosts is forbidden, when it is done *"devotionis causa."*

That it is forbidden in the present instance can scarcely be maintained. By so doing all danger would be removed. Of course, the sacred particles would not suffice in that case, but they might be broken in two, and two broken particles given to each communicant, taking care that the broken pieces given to each communicant be not parts of the same host.

In order to secure himself against the danger of giving two pieces of the same host to the same communicant, the celebrant would have to divide the particles into various fragments; some into two pieces, some into four pieces, etc., and give the communicant a half and a fourth part of a host.

5. It can not be denied that circumstances may arise where it would be practically impossible to divide the particles, as mentioned under No. 4 or even as under No. 3.

Therefore, we will venture to remark, as a final solution of the difficulty, that it is more than probable that the particle picked up off the floor was a consecrated host. The likelihood that it was not is very meager. Therefore, the likelihood of giving Communion, in the present instance, with an unconsecrated host, is likewise very small; so small, in fact, that a priest would be justified in exposing himself to it in order to extricate himself from so embarrassing a situation. Nor does he do any one an irreparable injury by thus exposing them to the very slight danger of communicating under unconsecrated species. Nor would the small danger of exposing himself and the faithful to commit an act of material idolatry be a sufficient reason for abstaining from distributing all the particles in Holy Communion.

XXXIII. DISPOSITIONS REQUIRED FOR SAYING MASS.

Titius, a priest, at the annual retreat of the clergy, makes a general Confession for the past year. In the course of his Confession, the confessor asks him, whether, during the past year, he always said Mass with the right dispositions. To this Titius replies that once, having committed a mortal sin, he said Mass without having previously gone to Confession. His reasons for doing so, he said, were that he was obliged to say Mass before he had an opportunity of going to Confession, because his confessor lived quite some distance from him, and there was no other priest to whom he could make his Confession, except his own assistant, who was much younger than himself, and besides was his nephew, and he could not bring himself to make his Confession to him.

He admitted, also, that on another occasion he had fallen into a like sin, and had said Mass the next day without having gone to Confession, but having made an act of perfect contrition. His reason was that he could not have omitted Mass without giving grave scandal, and he had no *"copia confessarii."* The confessor inquired further of Titius whether in both of these instances he had complied with the Tridentine law of going to Confession *"quam primum"* after the Mass.

Titius answered that he had complied with the law of the Council of Trent, by his weekly Confession, which happened, in these instances, about four or five days after saying Mass. In fact, Titius admitted, that on this second occasion he not only said Mass on the following day, when necessity obliged him to say it, but also on the three following days, when he might have easily omitted it. In this

he thought he was justified, because by an act of perfect contrition he had recovered the state of grace, and, being in the state of grace, he was free to say Mass every day if he so desired.

Hearing all this the confessor hesitated in forming his judgment about Titius, and first put the following questions to himself:

1. What dispositions of soul are required of a priest who desires to say Mass worthily?

2. How are we to understand the law of the Council of Trent (s. xiii., c. 7), which obliges priests to go to confession *"quam primum"?*

3. Did Titius do wrong by saying Mass on these several occasions, and what is to be said about the reasons he advanced to justify himself?

Solution.

1. Benedict XIV treats this matter in his work "De Sacrosancto Missae Sacrificio" (lib. 3. c. 11), where he gives the common and sound teaching of all theologians, when he says: "Sacerdotem oportet esse in gratia, et ab omni lethali expiatum." If the state of grace is required of a lay person, before receiving Holy Communion, with much greater reason is it required of a priest, who desires to say Mass.

Wherefore St. Thomas (3, q. 80, a. 4) treating this question, not especially in its relation to priests, but in its relation to all the faithful, whether priests or lay people, says: "quicunque cum peccato mortali Sacramentum Eucharistiae sumit, incurrit sacrilegium, tamquam sacramenti violator, et ideo mortaliter peccat." This doctrine he draws from the letter of St. Paul to the Corinthians: "qui manducat et bibit indigne, judicium sibi manducat et bibit." He interprets this text by the authority of Peter Lombard "indigne manducat et bibit qui in crimine est." The Council of Trent merely recalls the

doctrine of St. Thomas, with the text from St. Paul, and then adds: "quare communicare volenti revocandum est in memoriam ejus praeceptum: probet autem seipsum homo."

All of which, in our case, is equivalent to saying that as often as a priest is about to say Mass, and is conscious of mortal sin, it is necessary that he should first cleanse his soul from mortal sin and then approach the altar of God. Further on, the Council authentically interprets the text from St. Paul, and declares that the way to cleanse the conscience from mortal sin before Holy Communion is sacramental Confession. The words of the canon (12) are as follows:

"Ne tantum Sacramentum indigne atque ideo in mortem et condemnationem sumatur, statuit et declarat ipsa S. Synodus, illos quos conscientia peccati mortalis gravat, quantumcumque etiam se contritos existiment, habita copia confessoris, necessario praemittendam esse confessionem sacramentalem." With right, therefore, is this obligation of going to Confession before saying Mass, if conscious of mortal sin, drawn from the words of the apostle; for whosoever approaches the holy table must have the testimony of a good conscience, and if he be in sin, he must needs cleanse his soul. Now the ordinary way of cleansing the soul from mortal sin is by means of sacramental Confession. Therefore, sacramental Confession is necessary for any one desiring to receive Holy Communion and conscious of mortal sin. And, therefore, also, only in case of necessity is it sufficient to make an act of perfect contrition with a firm purpose of confessing.

2. "Quodsi necessitate urgente," says the Council of Trent, "sacerdos absque praevia confessione celebraverit, *quam primum* confiteatur." This law is binding only on priests, *solos sacerdotes adstringit.*

Two false interpretations have been put on this law of the Council

of Trent. Both of them have been condemned by Pope Alexander VII.

The first is that this law contains only a counsel or recommendation, and not a strict command. This can not be maintained, because the Council of Trent uses the imperative mode. Therefore, Alexander VII (prop. 38 damnata) condemns any interpretation of the words of the Council that would destroy their *imperative* nature.

The other false interpretation, condemned by the same Pontiff, says, "illa particula *quam primum* intelligitur, cum sacerdos suo tempore confitebitur." To put such a construction on the words of the Council, says Alexander VII, would be to make the law ridiculous, "praeceptum esset derisorium."

Quam primum, therefore, means the same day or at least within three days after saying Mass, for the word is to be taken in a *moral* sense, as in all human laws. All theologians are agreed on this. If the priest must say Mass the following day, he is not permitted to put off his Confession for three days, but must make his Confession the same day, if he can possibly do so.

3. From what has been said we conclude that Titius did not act rightly in the first instance, because there was a confessor at hand, to whom he should have gone to Confession. That the confessor was younger than Titius, and his nephew, made no difference under the circumstances. He was a "verus confessarius et, in casu, necessarius." The shame that Titius would experience in making his confession to his nephew was not a sufficient excuse, because more or less shame accompanies all confession of sin.

In the second instance, Titius acted according to the laws of the Council of Trent, and, therefore, is not to be blamed.

In the third and fourth instances he sinned.

XXXIV. AFFINITY AND UNBELIEVERS.*

A priest had a successful mission in his parish last year. As a good result of this time of grace Jacob and Caia decided to join the Catholic Church. Both belonged to no religion. After three months of earnest instruction the priest baptized them unconditionally. They had been married by a Protestant minister in 1907. Caia is the sister of Jacob's former wife Bertha, who died in 1905, never having received Baptism.

Question 1. Does a husband contract by marriage kinship with his wife's sister?

Answer.—The various relationships between men differ according as they have a different basis or foundation. Thus the relationship based on mutual esteem is friendship, that based on a common country is fellow-citizenship. The basis of kinship is nearness in blood. If this nearness is due to the fact that one of the relatives has begotten the other or that both of them descend from the same near ancestor, the relation is that of unity of blood or consanguinity. If there is no consanguinity between them and they are not man and wife, they may still be near in blood owing to a marriage of one of them with a close relative of the other, for such a marriage has for its purpose the mingling of the blood of their respective families. This second kind of kinship is called affinity or relationship by marriage, and it exists, among others, between a husband and his wife's sister (St. Thomas, Suppl., q. 55, aa. 1-3).

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*By J. A. McHugh, O.P.

Question 2. Does this kinship arise even from a marriage which is not sacramental because of the non-baptism of the parties?

Answer.—There are two kinds of kinship, the natural and the legal, according as the bond between the parties related is the natural one of nearness of blood or some other bond established by positive law. An example of natural kinship is the relationship between father and son; the relation between the adopter and the adopted illustrates legal kinship. Since the former kinship, unlike the latter, depends not on a particular but on universal law, it is contracted manifestly whenever its basis exists, irrespective of who the parties may be or of what particular law they may not be subject to. Thus if citizenship is required for adoption, an alien does not assume the legal relations and duties of adoption when he takes a child into his family; but the relationship and duties of parenthood, which depend not on the law of any particular country but on the natural law, are contracted by all, citizen and alien alike. While it is true, then, that the unbaptized are not subject to such laws of the Church as are purely ecclesiastical and intended only for the subjects of the Church, they are subject as well as the baptized to the natural law. Affinity or kinship by marriage, therefore, applies to them, since, as was said before, this particular kind of relationship has a basis not merely legal, but natural. Roman decisions have recognized affinity naturally contracted in infidelity (S. C. I., 26, Aug., 1891); nor is Canon 97 of the Code, which defines affinity as the relationship contracted from a *ratified* marriage, a proof to the contrary, since the legislator is treating of baptized persons and has not so worded the definition as to exclude all other affinity. Or we may distinguish by saying that while canonical affinity does not exist between relatives by marriage who are unbaptized, natural affinity does (Blat. De personis, pp. 20, 21).

Question 3. Is the affinity between a widower and his deceased wife's sister a natural impediment to marriage?

Answer.—To admit that affinity is a natural relationship does not oblige one to admit that it is a natural impediment to marriage. Cousins are naturally related, yet this relationship does not impede their marriage by natural, but only by positive law. The moral and physical reasons that constitute a natural impediment in the case of closer kinsfolk either do not exist at all or are not so urgent in the case of cousins. Hence, for sufficient reasons the Church allows cousins to marry, a thing it could not do if their kinship were an impediment of the natural law.

What is said of cousins can be said also of those related by affinity, even though the kinship be as close as that of brother-in-law and sister-in-law. This was denied by King Henry VIII. in his famous suit for the nullification of his marriage with Catharine of Aragon, the widow of his brother Arthur. He claimed that his marriage was rendered null by a diriment impediment of the natural law, relationship to a brother's wife, and quoted for his contention Lev. xviii. 16. The argument was weak, since the text had to do with a Mosaic, not a natural, impediment. The Jewish law, while it regarded marriage to a brother's widow as unbecoming when there was no sufficient reason, did not look upon it as abhorrent to nature and shameful. Indeed when a man died without progeny, it even commanded his brother to marry the widow (Deut. xxv. 5-10). The Anglican Church itself has abandoned the position of Henry VIII., and since the Marriage Act enacted by Parliament in 1907 solemnizes marriages between brother-in-law and sister-in-law.

The practice of the Church, which has granted dispensations both from lateral and direct affinity, shows that this impediment is not of the natural law (Augustine, V, p. 211).

Question 4. Is the affinity to a deceased wife's sister an ecclesiastical impediment to marriage?

Answer.—Marriage with a deceased wife's sister does not seem to have been forbidden under the law of Moses (Lev. xviii. 18). But under the more perfect Christian law it is invalid without dispensation. The reasons which induced the Church to establish a diriment impediment between a consort and the near relatives by blood of the partner were the reverence owed one to the other on account of their natural relationship, the good of society which is promoted when men marry outside their own narrow circle, the good of the parties themselves whose closer friendship is safeguarded against suspicion and danger by the impediment.

Before May 19th, 1918, when the Code became effective, the relationship between the widower and his wife's sister caused the diriment impediment of affinity in case of a consummated marriage, and the impediment of public decency in case of an unconsummated marriage. Under the Code this relationship constitutes the impediment of affinity in either case (Canon 1077).

Question 5. Does marriage between two non-baptized parties fall under the above ecclesiastical impediment of affinity?

Answer.—Impediments of the divine law, whether natural or positive, such as impotency or the bond of a previous marriage, apply to all men alike, since all are subject to the natural law and to the positive precepts which God has made for all. Purely ecclesiastical impediments, however, such as the relationship of god-parent and god-child, affect only those who are the subjects of the Church, *i. e.*, the baptized. Hence when two unbaptized persons related by affinity marry, the canonical impediment of affinity does not invalidate their contract, as would a natural impediment such as the bond of an existing valid marriage (Tanquerey, Synopsis theol. mor., n. 922).

Question 6. Is the affinity to a deceased wife's sister a civil impediment to marriage?

Answer.—In a number of countries (*e. g.*, Austria, France, Italy, Spain) the relationship to a deceased wife's sister is according to the civil code a bar to valid marriage, at least until the State has granted a dispensation. In England and the British Colonies marriage between two such parties was not permitted before the Colonial Marriage Act of 1906 and the Deceased Wife's Sister Marriage Act of 1907. In the United States, Virginia seems to be the only State that now forbids marriage with a deecased wife's sister. There such a marriage is absolutely void (Petrovits, The New Church Law on Matrimony, pp. 270-272).

Question 7. Is a marriage contracted between two non-baptized parties in face of a diriment impediment of the State null in the eyes of the Church?

Answer.—According to the common and more probable teaching of theologians the State has the right to establish diriment impediments for the marriages of the unbaptized, since those marriages are not subject to the Church. Hence if the impediments themselves are just and reasonable, *e. g.*, consanguinity, affinity, a marriage contracted between two infidels without the State's dispensation would be null, not only before the civil law, but also before the Church (Prummer, De matrimonio, n. 651).

Question 8. Does the canonical impediment of affinity arise when an infidel husband and wife receive Baptism?

Answer.—The impediment does arise, for its basis is the Sacrament of Matrimony or a ratified marriage. The lawful contract, previously made and not broken, becomes a sacrament by the very fact that the parties to it have become Christians, for among Christians the lawful contract of marriage is inseparable from the sacrament (Prummer, op. cit., n. 650).

Question 9. Was any dispensation from affinity required for Jacob and Caia at Baptism?

Answer.—No. There was no canonical impediment of affinity at the time of the marriage, for then they were not subject to canonical impediments as being infidels. No canonical impediment of affinity as regards themselves was produced by their Baptism. The relationship of affinity between Jacob and Caia arose from the marriage between Jacob and Bertha, a non-Christian marriage, not from the marriage between themselves made sacramental by their Baptism. Hence as the impediment of affinity is based on sacramental marriage, it could not exist in their case (Petrovits, op. cit., p. 265, n. 360).

XXXV. MAY A CATHOLIC GIRL ACT AS BRIDESMAID AT A NON-CATHOLIC MARRIAGE?

Bertha in Confession asks her confessor if it would be sinful for her to act as bridesmaid for her friend Stella, who is a Protestant, about to marry a Protestant, and in a Protestant church. The confessor replies that in his opinion Bertha would not sin, inasmuch as the contracting parties' action is not sinful, scl., marrying coram ministro; and, since the contracting parties are the ministri, Bertha is only a witness to the contract, and, strictly speaking, does not take part in heretical services any more than the other friends present to see Stella married. The witnesses take no part actively in the religious ceremony—they are only passive witnesses to it. However, the confessor advises Bertha that it is not expedient for her to act as bridesmaid, since it might possibly give scandal, and she promises not to do so.

Afterward, in discussing the case with some brother priests, the confessor is condemned for his opinion that Bertha would not sin; on the contrary, it is asserted that the confessor would have done wrong to give Bertha absolution in the event of her refusing to follow his advice. It was asserted that a case was referred to a certain seminary faculty, where a young lady wished to act as bridesmaid for Protestants; and it was alleged that a negative was given, and absolution forbidden if she did so.

It was also stated that in Germany, in some dioceses, it would be excommunication to act as witnesses to a Protestant marriage. The confessor still maintains his opinion that absolution is not to be denied if the penitent persists in her design of acting. And he maintains that as the other friends are not held in these parts to commit

any sin in going to the church to witness the wedding in pews, so Bertha, a more prominent witness, is taking no more real part in heretical worship than they in the body of the church.

The principle which governs the solution of this case is the principle laid down by all theologians, that it is not lawful for Catholics to take part in a false worship. If acting as bridesmaid at a non-Catholic wedding in a non-Catholic church in this country is considered a "communicatio in divinis," then it is not lawful for a Catholic to act in such capacity. If, however, acting as bridesmaid at a non-Catholic wedding in a non-Catholic church—in the United States—is not generally considered a "communicatio in divinis," then it may be lawful for a Catholic to act as such, provided it does not become unlawful for some other reason, v. g., on account of the scandal it might occasion, or the danger of perversion, or because it has been forbidden by the statutes of the diocese.

About the principle that it is not lawful for a Catholic to take part in a false worship, there is no dispute. The difficulty lies in determining whether the case before us comes under the principle.

We do not deny that in a very special case it might be evidently unlawful for a Catholic to act as bridesmaid at a non-Catholic marriage, because such conduct could scarcely be viewed in any other light than as a "*communicatio* in divinis," owing to the distinctly religious coloring given to the ceremony by the religious opinions of the contracting parties and the officiating minister. But the case before us is this: Is the marriage of non-Catholics in this country, though performed by a minister and in a Protestant church, generally looked upon as a religious rite, or is it considered merely as a civil contract? The mere fact that a marriage is performed by a minister of the Gospel, or in a Protestant church, does not make it a religious rite. It is made a religious rite by the beliefs and inten-

tions of the contracting parties and the minister, as well as of the religious denomination to which they belong, and the view that the public takes of it. If these perform it as a *religious rite,* and view it as such, then indeed it becomes a religious rite, and consequently a false worship. If, however, they do not consider it or perform it as a religious rite, then the mere fact that it is performed by a preacher, or in a non-Catholic church, does not constitute it a religious rite. The question, therefore, is reduced to this: Are non-Catholic marriages in this country looked upon, either by the parties contracting them or by the religious denomination to which such parties belong, or by the community generally, as a religious rite?

To this question American theologians answer in the negative. Non-Catholic marriages in the United States, although performed by a minister in a Protestant church, are not looked upon, as a general rule, as anything else than a civil proceeding, a serious social contract.

Archbishop Kenrick (Th. Mor. tr. XIII. n. 33) says: "Adstare nuptiarum celebrationi aestimatur plerumque obsequii erga sponsos indicium quin ritus heretici probentur."

Father Konings (I. n. 254) says:

"Idem dicit Kenrick, non esse peccatum, cum aliis de adstantibus nuptiarum coram haeretico praecone contractarum celebrationi, cum id plerumque non ut ritus haeretici approbatio aestimetur, sed ut obsequii erga sponsos indicium. Utrum vero idem dici possit de iis qui paranymphi (groomsman or bridesmaid) officio hac occasione funguntur, sapientioribus decidendum relinquo; multum hac in re tribuendum est communi aestimationi in populo vigenti; quod enim, haereticorum ritu *nullatenus* participato, civile tantum obsequium censetur, falsae religionis professio haberi nequit."

Father Sabetti, S.J., (Am. Eccl. Rev. June, 1890) says: "De assistentia matrimonio eadem danda est solutio; nam hujusmodi

actio apud nos reputatur ut *merum officium civile* et signum amicitiae. Nec circumstantia quod Veronica egerit partes principalis assistentis puellae (first bridesmaid), ullam facere debet difficultatem; siquidem illae ad tale munus seligi solent quae ex una parte sunt ad illud implendum aptiores ratione aetatis et civilis conditionis, et ex alia majori amicitia et strictiori vinculo benevolentiae feruntur erga sponsam. Hoc autem ostendit hujusmodi officium juxta mores nostros non reputari religiosum, nec ullam importare cultus participationem."

That the vast majority of non-Catholics in the United States look upon the marriage contract as a purely civil contract, possessing no sacramental or religious character, is a statement that hardly admits of question. All legislation concerning it is handed over to the State, and the minister performing the ceremony considers himself as acting for and in the name of the State, and marries all persons, who are allowed by the State to contract marriage, whether they belong to his particular religious denomination or another, or to no denomination at all. He marries believers and unbelievers alike, baptized and unbaptized, only solicitous that they be authorized by the civil law to marry. "The fact that weddings are usually ratified in a church is due partially to a traditional instinct which retains the solemnity of a sacred function for an act regarded merely as a grave social and civil contract" (Am. Ecc. Rev., Vol. vi., p. 465).

European theologians take a somewhat stricter view of this question, influenced, no doubt, by conditions of society obtaining in Europe.

Thus Genicot, S.J. (I., n. 200), says: "Insuper abstinendum est ab iis functionibus, quae involvant sectae agnitionem, v. g., a munere testis, qui contractui matrimoniali auctoritatem concilit."

Lehmkuhl (I. 295) says: "Ad nuptias vero vel sepulturam heterodoxi accedere, quum pro honore civili tantum habeatur, communiter

licet. Tamen etiam in his actionibus attendendum est num adsit propter circumstantias scandalum, perversionis periculum, specialis prohibitio."

Ballerini-Palmieri (n. 96) says: "An Catholicos licet adesse haereticorum nuptiis, quas haeretici celebrant valide quidem sed coram ministro haeretico et ritu haeretico? Distinguendum est inter eos qui simpliciter adsunt et eos qui testium munere fungentes auctoritatem conciliant contractui. Hi enim communicant cum haereticis in eorum re sacra et implicite auctoritatem illius sectae ejusque ministorum agnoscunt, quod, ut diximus, non licet."

It may be interesting to quote an author of as long ago as Lugo, though times and conditions have undergone vast changes since his day. Lugo, in his tract on faith (no. 157), says about acting as groomsman or bridesmaid at a non-Catholic wedding:

"Dubitari potest, tertio, an Catholicus non solum licite assistere possit nuptiis haereticorum, sed etiam in eisdem casibus paranymphi officio fungi, quando ad solemnitates adhibentur paranymphi, qui de more sponsos ad templa deducunt. Respondeo ex dictis, considerandum esse quale sit munus paranymphi, qui ab aliis *pronubus* vocatur, et ab antiquis *auspex*. Si ad eum solum pertineat tradere sponsam sponso, vel e contra postquam legitime conjuncti sunt, nihil apparet illicitum in eo munere, cum sit actio mere civilis. Si vero ejus munus sit quasi afferre sponsos ministro, ut eos conjungat, jam videtur habere participationem in ritibus, quibus minister haereticus eos conjungit et recurrere ad ipsum tamquam ad ministrum Ecclesiae, ejusque ministerium approbare, quod illicitum est."

In the year 1719, the Propaganda laid down the general rule for missionaries, "quod communicatio in divinis cum haereticis et schismaticis, ut illicita *regulariter* habenda est in praxi, vel ob periculum perversionis in fide Catholica, vel ob periculum participationis in ritu

haeretico et schismatico, vel denique ob periculum et occasionem scandali."

On May 10, 1770, the Congregation of the Holy Office answered, "Smus. decrevit Catholicis regulariter non licere haereticorum aut schismaticorum concionibus, baptismis matrimoniis interesse."

We are inclined to think, therefore, that as far as the United States is concerned, non-Catholic weddings are not, as a rule, religious affairs, but rather mere civil contracts, and to assist at them or to act as groomsman or bridesmaid is not a "communicatio in divinis," and is not, therefore, on these grounds, unlawful for Catholics. In a given instance, as we have remarked above, a non-Catholic marriage may be a religious rite, and, in that case, it would not be lawful for Catholics to take part in them as groomsman or bridesmaid.

But on other grounds it may be unlawful for Catholics to act as groomsman or bridesmaid at a non-Catholic wedding, namely, where such conduct would give scandal or create danger for the Catholic's faith, or where it has been forbidden by the diocesan authorities. And as these dangers may exist in any given case, each case should be considered on its own individual merits.

Where there is a good reason for a Catholic girl, for instance, to act as bridesmaid at a non-Catholic wedding, and where the marriage ceremony can not be considered a sacred rite, and where no scandal is given and no risk taken for her faith, a priest in the United States is justified in permitting such a girl to take part in the wedding, and would scarcely act wisely in refusing her absolution, if she would not promise not to take part.

But where there is no serious reason for a Catholic girl to act as bridesmaid at such a marriage, and where she may decline without serious inconvenience to herself and to others, we think it the part of prudence for a confessor or pastor to induce her to decline.

XXXVI. WHERE SHOULD A NEW-BORN CHILD BE BAPTIZED?

Titia, until her marriage a year ago, lived with her parents in the parish of N., where Cajus is pastor. Upon her marriage, she went to live with her husband in a neighboring parish, some twenty miles distant, and has lived there ever since. A few weeks ago, about to become a mother, she returned to her parents' home and there gave birth to a strong, healthy boy. The following day Titia's mother took the baby to Cajus, the parish priest of N., to have it baptized. Cajus at first demurred, thinking that the baby ought to be taken to the present pastor of Titia and her husband, and he did not wish to give cause for criticism. However, on second thought, he concluded to baptize the child, and to send the stipend to Titia's actual pastor. On another occasion, a girl who was brought up in a neighboring parish, where her parents still live, married a man from Cajus' parish and lives there at present with her husband. When she was about to be confined, she returned to her parents' home and was confined there, but had the child brought to Cajus to be baptized, as he was her parish priest at present, and she liked him better than the pastor of the town where she was confined. This child Cajus also baptized, because although born outside his parish, it belonged to his jurisdiction, since its parents had their actual domicile in his parish. Cajus' way of doing gave rise to considerable discussion among his brother priests, some of whom defended him, while others censured him. In his dilemma, Cajus desires to know:

1. Was he right in baptizing a child born within his parish, but whose parents have a fixed dwelling outside of the parish?

2. Was he right in baptizing a child born outside his parish, but whose parents are his parishioners?

To the first question we answer yes. Cajus did right in baptizing the child born in his parish, although its parents had their domicile in another parish, and had no quasi domicile in his parish. St. Alphonsus, l. 6, tr. 2, de Bap. n. 115, says: "Si mulier casu pariat in pago non suo, proles ab illius pagi parocho est baptizanda. Verumtamen, si pagus ille parum distet a pago proprio, v. g. duabus aut tribus horis, potest baptizari proles etiam in ecclesia sua."

According to St. Alphonsus, therefore, the child has the privilege of being baptized wherever it is born. If it is not born in the parish of its parents, and if that parish is not far distant, for example, ten or twelve miles, then the child *may* be taken home to the parish priest of its parents to be baptized, but it *need* not be. In that case, both priests are parish priests "in ordine ad Baptismum." It is very easy to understand the reasons why a child ought to be baptized where it is born. If it had to be taken home to the parish where its parents reside, it would have to be separated from its mother for a long time, and at a most critical moment of its existence, or else it would have to be deprived of the grace of Baptism until its mother is sufficiently recovered to accompany it, which would be several weeks at least, and sometimes longer, so that the child would be exposed to the danger of dying without Baptism. This latter, of course, is against the will and desire of the Church, which commands that the child be brought to Baptism as soon as possible after its birth. It is always not only the privilege, but also the duty, of the pastor of the place where the child is born to baptize it if the child is taken to him, and he retains the stipend offered for the baptism as his own. If the parish of the child's parents is not too far distant, that is, if the child is exposed to no

risk by being taken back to its parents' parish to be baptized, then it *may* be taken there, but there is no obligation to do so. St. Alphonsus limits the distance that the child *may* be carried to be baptized by its parents' pastor to ten or twelve miles.

The holy doctor lived, of course, when there were no railroads or other modern means of transportation, and ten or twelve miles in a stage coach or on foot was the measure of fatigue that a child could endure, and the time spent in making the journey the limit of time that a new-born babe might safely be separated from its mother. With modern methods of transportation, and the progress made in the artificial nursing of children, a new-born child might be carried much farther to-day than in the days of St. Alphonsus, and yet run no risk. Still, modern theologians follow St. Alphonsus in determining the distance that a child *may* be carried in order to have it baptized by the parish priest of its parents.

Thus Genicot, II., n. 139: "Si mulier pariat in pago non suo, proles ab illius pagi parocho est baptizanda. Verumtamen, si pagus ille parum distet a pago proprio, e. g. tribus leucis, potest proles etiam ad ecclesiam suam deferri."

Bucceroni, S.J., de Bapt. n. 422: "In qua paroecia baptizari debeat infans, si parentes nec domicilium vel quasi-domicilium habeant, vel ab illo distent? Si mulier casu pariat in pago non suo, proles ab illius pagi parocho est baptizanda; verumtamen, si ille pagus parum distet a pago proprio, v. g. duabus aut tribus horis, potest baptizari proles etiam in ecclesia sua."

Lehmkuhl, II. n. 66 ad 3: "Imo si mulier parit in loco non suo, infans baptizandus est a parocho loci, ubi peperit mater et decumbit, nisi forte aeque bene ad proprium parochum deferri possit; imo si parochia patria non distat ultra 3 leucas, semper *licet* ad proprium parochum infantem deferre."

Kenrick, de Bapt. n. 14, Aertnys, C.SS.R., de Bapt. n. 35, Konings, 1258, etc., all repeat almost verbatim the words of St. Alphonsus, who himself takes this opinion from the theologians who preceded him, v. g., Croig, n. 275, Salmant. de Bapt. c. 4. p. 4, n. 58.

Therefore, we conclude, that in the first instance Cajus did right in baptizing the child born in his parish, but whose parents lived in another parish.

Cajus did right also in the second instance, namely, baptizing a child whose parents lived in his parish, but which was born in a neighboring parish. This is evident from the answer just given to the first question. In this second case, if the child had been born in a parish far distant from Cajus' parish, and he had been consulted beforehand, he should have advised the parents to have the child baptized *where it was born,* as, under ordinary circumstances, that would have been better for the child from every point of view. If, however, the parents had not consulted him beforehand, but had returned home with the child and asked him to baptize it, he was perfectly within his rights in baptizing it.

The teaching of theologians is confirmed by the Code in Canon 738, sec. 2, which states that one absent from his own parish should be baptized in his own parish by his own pastor if it can be done easily and without delay; otherwise any pastor may baptize a stranger staying within the territory of his parish.

XXXVII. A RECENT PAPAL DISPENSATION "SUPER MATRIMONIO RATO ET NON CONSUMMATO."

Miss A. R., twenty years of age, living in Linz, Austria, was married in 1894 to a Catholic young man, twenty-four years of age, in one of the parish churches of that city. After a wedding trip to Vienna, the young couple returned to Linz and took up their residence there. From the start, the marriage had not been a very happy one. Though the couple had conjugal relations, still the marriage remained "non consummatum." The husband was fully aware of this fact, but the wife, being quite innocent and ignorant of the physiology of marriage, never realized that the marriage was not consummated.

This continued for eight years. In the year 1902, the wife, in a confidential talk with a lady friend, expressed her regret that she had never been blessed with children, though she longed very much for them and prayed for them. From this lady the wife learned of the true state of affairs between herself and her husband. This friend's husband, a lawyer, hearing from his wife how things were going on between A. R. and her husband, suspected that there might be an impediment of impotency on the part of the husband, and persuaded A. R. to submit to a medical examination. The physician found that A. R. had never been violated, and that there was no fault as far as she was concerned, because she was perfectly capable of consummating the marriage.

Upon this testimony of the physician, the wife immediately began proceedings in the civil court against her husband, with the view of being divorced, because there was a nullifying impediment of impotency from the start, and the civil law grants divorces for that cause.

The court ordered two of its own physicians to examine the wife, and their testimony, under oath, agreed with the testimony of the first physician who examined A. R., namely, that she had never been exposed. On April 25, 1902, the civil court pronounced the marriage invalid, and authorized A. R. to contract a new marriage, if she so desired.

On the advice of the physicians, the court would not affirm that there was an impediment of *absolute* impotency on the part of the husband, but it did affirm that the evidence left no room to doubt that there was an impediment of *relative* impotency proven against the husband.

On being informed of the decision of the court, the husband appealed the case. The court of appeal held that by continuing to live with her husband after she had learned of his impotency, she had forfeited her right to a divorce, under the act. The case was then taken to the highest court in the land, which sustained the findings of the first or lowest court, and granted a full divorce "a toro et a vinculo," on September 2, 1902. This ended the proceedings, as far as the civil law was concerned. The marriage was declared null and void, and was ordered so entered in the marriage records of the parish church.

In the same month of September, 1902, the now civilly divorced wife, A. R., appeared in the Bishop's court, in order to have her marriage annulled also by the Church authorities.

The Church authorities, however, were not long in realizing that it would be very difficult to institute canonical proceedings to establish the original invalidity of the marriage, since the husband refused to appear in the Bishop's court, and wholly ignored the summons to do so. He said that, as far as he was concerned, the civil authority had annulled his marriage with A. R., and that was

quite sufficient. He considered any action by the Church authorities superfluous, and refused to aid in any manner whatsoever their proceedings. As there was no way of compelling him to appear and testify in the Bishop's court, the Church authorities were obliged to proceed without his testimony. The only way open to them seemed to be to procure a papal dispensation "super matrimonio rato et non consummato." This course appeared advisable, because, even though the husband had refused to appear or testify, the civil law had accepted the evidence submitted by the physicians as to the inviolated condition of the wife, and had pronounced the marriage invalid, even though the husband had not been examined.

Accordingly, two physicians and seven witnesses (testimonium septimae manus) were placed under oath to examine the wife, while the wife herself was put under oath to testify. The wife gave the same testimony about her married experience that she had given in the civil court. The two physicians swore to her inviolated condition. The seven witnesses could say nothing about her married life, since she had never spoken to them about it, but they all declared that they knew her intimately, as they were her next of kin, and that she was a pious, pure, and truthful person. There was no testimony "septimae manus" concerning the husband, since no witnesses could be procured who knew him sufficiently well or intimately to justify them in giving witness in his case. As the plaintiff had urgently besought the Bishop's court to give a decision with all possible despatch, since she had no means of support, and must in the meantime look to her mother for assistance, who also was poor, the Bishop presumed the permission of the Holy See to institute a canonical trial "de matrimonio inquirendo," which course was afterward approved by the Holy See. A full account of both trials, together with all the documents and

papers in the case, and the sworn testimony of the witnesses, was forwarded to the S. Congregation of the Council at Rome, November 1, 1902. The following reasons were urged why the Holy See should grant a dispensation in the case:

1. The poverty of the petitioner, who had now the opportunity of contracting a new marriage, and thus providing for herself, whereas, if a new marriage were made unlawful for her, she would be obliged to go to work as a servant, or become a burden to her mother, who was without means to help her.

2. The danger to which she would be exposed of losing her faith—a danger which was real and present, by marrying a non-Catholic, or contracting a civil marriage, which was her privilege under the civil law.

3. It was further urged that there would be no "scandalum aut admiratio fidelium" to fear, since the decision of the civil court was already known, and a favorable rather than unfavorable decision was likewise expected from the Church authorities.

All through the winter of 1902-3 private means were taken to urge the authorities in Rome to act with expedition, and finally, in the beginning of May, 1903, word was received that the case would come up for consideration in the session of the S. Congregatio Concilii on the 16th of May. And so it did. After a thorough investigation of the whole trial by a learned Canonist and the "Defensor vinculi," both of whom approved the finding of the court, the following Dubium was laid before the Sacred Congregation:

"An sit consulendum SSmo.: pro dispensatione super matrimonio rato et non consummato in casu?"

The Congregation replied:

"Praevia sanatione actorum (because authorization had not been

obtained beforehand by the Bishop's court from the Holy See to institute proceedings) affirmative ad cautelam."

The Cardinal Perfect of the Sacred Congregation laid this reply of the Congregation before the Holy Father on the 18th of May, who then granted a dispensation "super matrimonio rato et non consummato." On June 8 following, A. R. contracted a new marriage with the approval and blessing of the Church.

The case provoked no public criticism or comment of any kind, and was not even mentioned in the newspapers. In some private circles, especially in one sewing circle, considerable gossip was indulged in. But the fact that A. R., even after eight years of married life, was declared by competent physicians to have preserved herself inviolated, shamed busy tongues into silence.

Had A. R. been rich instead of poor, much comment might have been occasioned as to the power of money to purchase dispensations.

XXXVIII. ARE BAPTIZED NON-CATHOLICS BOUND BY THE LAWS OF THE CHURCH?

Miss X., a non-Catholic young lady, being convinced of the truth of the Catholic Church, and desirous of becoming a Catholic, meets with so much opposition from her parents that she decides to postpone her conversion until she reaches her majority. In the meantime, however, she is in doubt as to the line of conduct she ought to follow in regard to hearing Mass on Sundays and abstaining from the use of flesh meat on Fridays and other days of abstinence. Being conscientious about the matter, she consults a priest as to her duty under the circumstances. The priest informs her that she will have to hear Mass on Sundays and holydays of obligation and abstain from meat on Fridays and other forbidden days, just as if she were already a Catholic. His reason for this decision is that baptized non-Catholics are subject to the laws of the Church just like Catholics. The disobedience of heretics does not destroy the jurisdiction of the Church over them, neither does the Church "de facto" exempt them from the observance of her laws. Therefore he concludes that Miss X. is obliged to keep the laws of the Church regarding the hearing of Mass on Sundays and holydays of obligation and abstaining from the use of flesh meat on Fridays and other days of abstinence. From this latter obligation, however, namely, the obligation of abstaining, the priest dispenses her, by virtue of the general faculties he holds from the bishop.

Now it is asked: Is the position taken by the priest absolutely correct? At first sight it might seem to be correct. However, upon examination, it will be found to be incorrect in some points, and in others only probably correct, and therefore not a sufficient basis

upon which to found a sure and certain obligation, binding in conscience.

1. Practically speaking, before inquiring further into the duty of Miss X. in her present circumstances, we should first of all endeavor to establish the validity of her non-Catholic baptism. Was Miss X. ever validly baptized? Because if there is reasonable ground for doubting the validity of her non-Catholic baptism, then she was only probably baptized, and therefore probably also never subject to the laws of the Church.

For although "in foro externo" those who have been doubtfully baptized are looked upon as having been validly baptized, as far as the obligations consequent on baptism are concerned, still this does not hold good "in foro interno," where there is question of an obligation binding in conscience.

2. If, however, there are no good grounds for questioning the validity of Miss X.'s non-Catholic baptism, then we find theologians divided as to her obligation to obey the laws of the Church before making her submission to the Church.

Although there are very good theologians who hold that Miss X. is bound by the laws of the Church in the present circumstances, still there are other good theologians and canonists who contend that she is not bound by these laws. All the theologians are agreed that the Church's jurisdiction extends to all baptized persons, including heretics and schismatics, so that the Church may legislate even for baptized non-Catholics, though they be cut off from external communion with her.

The only question which divides the theologians is this: Does the Church *actually intend* that *all* her laws shall be binding on *all* her baptized children, including heretics and schismatics? Or is there reasonable ground for distinguishing between some laws of the

Church and others, and saying that the Church desires that *some* of her laws should bind all alike, Catholics and non-Catholics, provided they are baptized, and that others of her laws she makes binding on Catholics alone?

The theologians who contend that all the Church's laws are binding on all baptized persons, advance the reason that it can not be the intention of the Church that her disobedient children should profit by their sin of heresy or schism by being exempted from laws that are binding on the faithful and obedient.

The theologians who hold that not all laws of the Church are binding on heretics and schismatics, make the following distinction: Some laws of the Church aim directly at the removal of abuses, at promoting the public good and safeguarding Christian society, as, for instance, the laws concerning marriage impediments and others, which the Church has repeatedly declared to be binding on all baptized persons. Other laws of the Church aim directly at the sanctification of souls, as, for example, the laws of hearing Mass on Sundays, and abstaining from flesh meat on Fridays, and these laws the Church does not wish to be binding on baptized non-Catholics, because the only result of such an intention on the part of the Church would be to multiply sin.

Thus De Angelis, Prael. jur. can. l. I. tit. 2, n, 13, says that the whole question resolves itself into this: Does the Church wish to hold heretics and schismatics to her laws?

"Et si quid in hac materia liceat opinari, nostra mens est, eos maxime teneri illis legibus observandis, quae ad abusus compescendos, aut ad ordinem publicum et honestam conversationem tuendam in societate Christiana latae sunt, puta leges de impedimentis matrimonii, praesertim dirimentibus, aliaeque; namque plus semel Auctoritas Ecclesiastica requisita, expresse vel aequivalenter eos

teneri asseruit. Si vero sermo sit de aliis legibus ecclesiastics, quae ad sanctificationem personarum directe tendunt, eos ab Ecclesia non obligari est dicendum, cum Ecclesia perspiciat eos contumaciter resisturos, et hoc nihil aliud esset nisi multiplicare peccatum."

Those who affirm that it is the Church's intention to hold even her rebellious children to all her laws appeal to the marriage legislation of the Church, which legislation Benedict XIV and Pius VII affirm to be binding on all baptized persons, because the Church has jurisdiction even over heretics and schismatics. But no one calls this general principle into question. The question is, Does the Church actually intend that every exercise of her jurisdiction should affect Catholics and non-Catholics alike? Does she make some laws for Catholics only, and others for all baptized Christians? We think that there are reasonable grounds for holding that the Church does *not* intend that laws like the law of hearing Mass on Sunday, and abstaining from the use of flesh meat on Friday, should be binding on baptized non-Catholics. Even from the law of clandestine marriage, the Church expressly exempted such heretics as had already set up a separate religious establishment, when the Tridentine decree "Tametsi" was promulgated in their territory. The opinions of the earlier post-Reformation theologians on this matter must be read in the light of the religious conditions prevailing in the world to-day.

Thus the danger that de Lugo (de Poenit. disp. 15, n. 144) foresaw for Catholics, if the opinion exempting baptized non-Catholics from the observance of some laws of the Church prevailed, has entirely disappeared in our day. He thought that it would be holding out an inducement to weak Catholics to leave the Church in order to be freed from the obligations of her laws, "per hoc daretur ansa, ut multi malitiose se subtraherent a legum obligatione, ponendo se in

tali statu, in quo propter ipsorum perversitatem non crederentur observaturi legem et sic non intelligerentur obligari."

3. It was a mistake to dispense Miss X. from the law of abstinence by virtue of Apostolic faculties. "In foro externo," Miss X. is a heretic, and therefore cut off from the visible communion of the Church. The faculties granted by the Holy See may not be used in favor of any one outside the body of the Church. (Putzer, Com. in Facul. Apost. n. 46.)

The Code does not settle the controversy as to the theoretical obligation of baptized non-Catholics to observe all the laws of the Church except those from which the Church has explicitly dispensed them. Canon 87 seems to be against the opinion of those who say that the Church does not intend to bind by her laws the Christians separated from her union. That Canon simply asserts that by Baptism a person becomes a subject of the Church with all the duties and rights of a subject of the Church; as to the rights there may be an obstacle in the nature either of external separation, as in the case of the various Christian sects, or a censure inflicted by the Church. Nevertheless, even after the promulgation of the Code some authors, for instance Maroto, hold it as a probable opinion that the baptized non-Catholics are exempt from the laws directly intended for the sanctification of souls. There seems to be no foundation for this opinion in law; the fact that the Church explicitly exempts them in the Code from the impediment of disparity of cult (marriage between baptized non-Catholic and unbaptized person) and from the form of marriage, argues rather that the Church considers them bound by her laws. Ignorance, however, may excuse them accidentally from committing sin by breaking the laws.

XXXIX. A MIXED MARRIAGE IN A TOWN WHERE THE "TAMETSI" IS IN FORCE.*

Titius, a Protestant young man, and Caja, a Catholic young woman, both residents of New York City, joined a party of excursionists on a trip to the Yellowstone Park in the summer of 1903. While in Albuquerque, N. M., they were married by a Protestant minister. Some time after their return to New York Caja became uneasy about her marriage, and finally laid the matter before a priest. As clandestinity is not a diriment impediment to marriage in New York, the case was somewhat unusual, and at first sight perplexing. On one hand, it might appear that Titius, being a Protestant, is not bound by the laws of the Church regarding marriage, and therefore, neither is Caja "propter individuitatem contractus." Again, the priest recollects that some few years ago some new rulings were made by the Holy See in regard to clandestine marriages in the United States, making them valid in some cases where formerly they were doubtful; but just what was the import of these rulings he does not recall. On the other hand, he argues that all baptized persons are bound by the laws of the Church, otherwise a premium would be put on heresy. In this perplexity he takes the matter under consideration and comes to the following conclusion:

There are two kinds of Church laws; some Church laws are made for the public good, for the promotion of the public welfare and the protection of society. These laws are binding on all baptized persons, whether Catholic or non-Catholic. Of such are the marriage laws of the Church, creating diriment impediments to marriage, v. g., the laws of consanguinity and affinity. There are

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*See page 170.

other laws of the Church which aim directly at the sanctification of the individual, v. g., the law of hearing Mass on Sunday, of abstaining from flesh meat on Friday, etc., and these laws the Church does not wish to bind baptized non-Catholics, for such an intention on the part of the Church would only multiply sin.* Now, among the former laws, which the Church makes for the good of society, and not for the sanctification of the individual, is the law of clandestinity in regard to marriage, and this law, therefore, the Church wishes to bind all baptized persons, whether Catholic or non-Catholic, except in cases where she expressly dispenses from it. That baptized non-Catholics are bound by the marriage laws of the Church is clearly set forth in the letter of Pope Benedict XIV to the Cardinal, Duke of York, February 9, 1749, and has never been questioned by any theologian. Only where the Church issues a special dispensation from her marriage laws is a marriage of baptized persons valid, if the same is forbidden by a law of the Church under pain of invalidity. It makes no difference whether both parties to the marriage be Catholics, or both non-Catholics, or one Catholic and the other Protestant. Now we know that while the law of clandestinity does not create a diriment impediment to marriage between baptized persons in most parts of the United States, still there are some districts where it is in force, and where, consequently, the marriage of baptized persons, unless contracted before the parish priest and two witnesses, is invalid. What these districts are we learn from the Fathers of the third plenary Council of Baltimore. In the year 1884 the Bishops of the Council sent to Pope Leo XIII a list of both the places in the United States, where the decree "Tametsi," of the Council of Trent, was binding, and of the places where it had never been published, and therefore was never in force. This list has not the force of a law, neither has it

*See Case xxxviii, page 160.

ever received the official endorsement of the Holy See, nevertheless it is of paramount authority, since it was compiled with great care by the bishops and theologians of the Council. According to this list, the decree "Tametsi," of the Council of Trent, making clandestinity a nullifying impediment to marriage between baptized persons, is in force in the following places in the United States:

1. In the entire province of New Orleans. 2. In the province of San Francisco and in the State of Utah, except that part that lies east of the Colorado River. 3. In the province of Santa Fe, except that part of the State of Colorado that lies north of the Arkansas River. 4. In the diocese of Vincennes, Ind. 5. In the city of St. Louis, Mo., and in the villages of Ste. Genevieve, St. Ferdinand, and St. Charles, in the same State. 6. In the city of East St. Louis, Ill., as also in the villages of Centerville Station, Prairie du Rocher, Cahokia, French Village, and Kaskaskia (which has recently been obliterated by the Mississippi River), in the diocese of Belleville, Ill., now, but formerly in the older diocese of Alton, Ill.

In all other parts of the United States the "Tametsi" decree of the Council of Trent has not been published, and therefore clandestinity does not constitute a diriment impediment to marriage between baptized persons.

In all places, therefore, in the United States, where, according to the list of the bishops of the third plenary Council of Baltimore, the "Tametsi" is in force, the marriages of Catholics are invalid unless entered into before the parish priest and two witnesses. In all these districts the marriages of baptized non-Catholics would likewise be invalid, were it not for the fact that the dispensation of Pope Benedict XIV has been applied to them, removing the impediment of clandestinity in the case of non-Catholic marriages. But has the "declaratio Benedictina" been extended, for a cer-

tainty, to all the territory of the United States where the "Tametsi" is in force? According to the Fathers of the third plenary Council of Baltimore, the "declaratio Benedictina," declaring valid the marriages of baptized non-Catholics, contracted in places where the "Tametsi" is in force, provided, of course, they be not invalid for some other reason, has been extended, for certain, to: 1. The Archdiocese of New Orleans, and to the dioceses of Natchitoches, Natchez, Little Rock, and Mobile, in the province of New Orleans. 2. The province of San Francisco and the State of Utah. 3. The diocese of Vincennes, Ind. 4. The Archdiocese of St. Louis, Mo. 5. The diocese of Belleville, Ill.

According to the same Council of Baltimore, the "declaratio Benedictina" has never been extended to the province of Santa Fe, N. M.

Whether the "declaratio Benedictina" had ever been extended to Texas, i. e., to the dioceses of San Antonio, Galveston, and Brownsville, the bishops of the third plenary Council could not say for sure, and therefore, to remove the doubt, in the case of Texas, and to render the practice uniform for the whole country, the bishops of the United States, in 1884, petitioned the Holy See to extend the "declaratio Benedictina," not only to the dioceses of Texas, in case it had never been extended to them, but also to the province of Santa Fe. In reply to this petition of the bishops the Holy See, in November, 1885, agreed to extend the "declaratio Benedictina" to the dioceses of Texas, but not to the province of Santa Fe. Therefore the province of Santa Fe is the only territory, in the United States, where clandestinity operates as a nullifying impediment in the case of marriages of baptized non-Catholics.

What is true of clandestine marriages of baptized non-Catholics, among themselves, is true also of clandestine mixed marriages. (Tanquerey, de Mat. n. 408.)

The marriage of Titius and Caja took place at Albuquerque, N. M., in the province of Santa Fe. As the "declaratio Benedictina" has never been extended to that province, the marriage was subject to the law of clandestinity, which rendered it null and void, because it was not contracted "coram parocho et duobus testibus." Had it been contracted in any other part of the country, where the "Tametsi" is in force, it would have been valid, on account of the dispensation of Benedict XIV.

This law of clandestinity is both *territorial* and *personal.* In as far as it is territorial, it affects *directly* the territory where it has been published, and *indirectly* it affects or binds all those who dwell there, as well as those journeying through it, even though they have no domicile or quasi-domicile there. Thus, two Catholics of the archdiocese of New York, where the "Tametsi" is not in force, journeying through the province of New Orleans, where the "Tametsi" is in force, and while there, contracting a clandestine marriage, contract invalidly. Two baptized Protestants, however, contracting marriage under the same circumstances, contract validly, on account of the "declaratio Benedictina." Their marriage, however, would be invalid, if contracted in Santa Fe, for the papal dispensation removing the impediment of clandestinity for them in New Orleans has never been extended to the territory of Sante Fe.

As far as the law of clandestinity is personal, it affects all baptized persons dwelling in the territory, in this way, that it forbids them to leave the territory and to go elsewhere, where the "Tametsi" is not in force, in order to get married clandestinely, that is "in fraudem legis," in order to cheat the law, without the sincere intention of acquiring there a domicile or quasi-domicile.

In 1886 the Holy See made a special ruling for the United States

in regard to the length of time required for acquiring a quasi-domicile "in ordine ad matrimonium." The general rule is that, in order to acquire a quasi-domicile, "in ordine ad matrimonium," a residence "per majorem anni partem" is required. That is, there must be a de facto residence and an intention of remaining there "per majorem anni partem." But since 1886, in the United States, a residence of *one* month outside of the territory governed by the "Tametsi" is all that is required to gain a legal residence in the eyes of the Church, for the purpose ot marriage (Coll. P. F. n. 1413).

Therefore, Titius and Caja are not validly married, and besides Caja is excommunicated for appearing before a Protestant minister. She must first procure a dispensation from the excommunication, then a dispensation from the impediment "mixtae religionis," and after the non-Catholic party has made the necessary promises regarding the faith of the children issuing from the marriage, provided there is no other obstacle or impediment, Titius and Caja may be united in lawful wedlock.

The case give above has application only in marriages contracted before April 19, 1908, the date on which the "Ne Temere" decree came into force, which is now embodied in the Code of Canon Law. As it is possible that a case of the same kind as the one here given may come up even now, the summary of the former law as given in the case is of value, because the more rarely a case occurs the more difficult it is, as a rule, to solve. Since the "Ne Temere" all marriages of Catholics outside the Church in any part of the United States are invalid before the Church.

XL. A CASE OF RESTITUTION.

Mr. X was engaged, some years ago, in the wholesale dry goods business. The saying that "every business man fails at least once in his life," came true of him. He failed for $25,000, with assets amounting to about half that sum. His creditors were, first, several wholesale houses, to whom he owed $20,000; second, a friend, from whom he had borrowed $4,000; third, a dressmaker, to whom he owed about $1,000 for garments for his family. Mr. X, though a Catholic, had neglected the practice of his religion, but was, nevertheless, in his business dealings an honest man. It was through no fault of his that he failed, and he turned over conscientiously to the receiver for his estate whatever he possessed in the nature of assets. When his affairs were finally settled, it was found that he was able to pay fifty cents on the dollar. This he paid and got a discharge from the court, under the bankruptcy laws, from all further liability for these debts.

He went to work again, courageously, to retrieve his fortunes. By industry and economy, he has succeeded in laying by about $15,000. But now his health is broken and he is growing old, and is obliged to retire from business for good. He has nothing to depend on for the support of himself and his wife and an invalid child but this $15,000. He has made up his mind to return to the practice of the faith, and this matter of his earlier failure disturbs him. He was discharged by the court from further liability, after paying fifty cents on the dollar, at that time, because it was all he had wherewith to pay. Now he asks himself, Was that discharge of the court also a discharge in conscience? Did it wipe out, before God, his obligation of paying the other fifty cents out of his future acquisitions? Or did it only

discharge his person, and leave his obligation to pay out of his future acquisitions in full force? This is the question that he asks his confessor to settle for him, as it is now only a question of conscience.

Solution. Theologians are agreed that a *"cessio bonorum,"* whether voluntary or ordered by the court, does not, of itself and independently of other considerations, relieve a debtor of the obligation of making full payment of his debts out of his future acquisitions, if he be able to do so.

Dr. Crolly, sometime professor in Maynooth College, and an authority of weight, contends that the intention of the insolvent laws of England is to wipe out the debt entirely, and that these laws must be considered just and equitable, and applicable in the court of conscience. (De just. et jure, vol. iii., n. 1232.)

But Lehmkuhl takes exception to this contention of Dr. Crolly, and maintains that the insolvent laws of England or of any other country can not, of themselves, discharge *the conscience* of the debtor from further liability for his debts, unless other conditions are present, from which it may be gathered that the creditors renounce all future claims against him.

And this opinion of Lehmkuhl is the opinion practically of all the theologians.

A specific case, according to modern theologians, where a *"cessio bonorum,"* followed by a discharge of the court, operates in conscience also, and wipes out the obligation of future payment, is the case of wholesale and retail merchants, making a bona fide assignment in favor of their creditors. In this case it is not the discharge of the court that wipes out the debtor's liability in conscience, but it is the method of doing business prevailing to-day that makes it probable, if not altogether certain that there existed a tacit contract between the retail and wholesale merchant that in case of a bona fide

failure, the creditor would take the debtor's assets in payment for his debts, and renounce all further claims to be paid out of future acquisitions.

Father Konings (Theol. Mor. i., n. 861) says that there are theologians to-day who think that the opinion of earlier writers on this matter must be abandoned, because of the new methods introduced into commercial transactions. Commerce to-day, they say, is conducted almost exclusively on a credit basis. The creditors foreseeing that, among their numerous debtors, there will be some who will fail and who will be obliged, in consequence, to settle with them for a certain per cent on the dollar, charge a higher price for their goods, or a higher rate of interest for their money, in order to secure themselves against loss. It is tacitly understood among business men that if one of their number makes a bona fide assignment, his creditors take what is left and renounce all further claims against him. The insolvent laws, discharging the debtor from further liability, are equally fair to all, beforehand. The benefit which A reaps under them to-day at the expense of B is reaped later on by B at the expense of A, or of some one else of their number. To all of this Konings replies: "Haec, quanti valeant, et utrum, saltem simul sumpta, opinionem illam probabilem efficiant, viderint sapientiores."

We believe, with Konings and others, that it is not the intention of the insolvent laws of the United States, or of any other country, to discharge the *conscience* of the debtor from further liability. Although the civil law uses the words "forever discharged from all debts and claims," it takes no account of the conscience, and only means by these words that the creditors are forever denied any action in the future against a legally discharged debtor.

Judge Kent (Commentaries on Am. Law, vol. I., n. 422) says, in regard to the value of insolvent laws: "The 'cessio bonorum' of

the Roman law, and which prevails at present in most parts of the continent of Europe, only exempted the *person* of the debtor from imprisonment. It did not release or discharge the debt, or exempt the future acquisitions of the debtor from execution of the debt. The English statute of George II, commonly called the lords' act, and the more recent English statutes of George III and George IV have gone no further than to discharge the debtor's person; and it may be laid down as the law of Germany, France, Holland, Scotland, and England, etc., that insolvent laws are not more extensive in their operation than the 'cessio bonorum' of the civil law."

Again in vol. ii., p. 392, note, he says: "It was stated by the Chief Justice in giving the opinion of the Supreme Court of the United States, in Sturges vs. Crowninshield, 4, Wheaton, 122, that the insolvent laws of most of the States only discharge the person of the debtor and leave his obligation to pay out of his future acquisitions in full force." These laws have been very materially changed, of course, since the days of Judge Kent, both in their purpose and nature, and are less concerned to-day than ever perhaps about the "forum internum," or court of conscience.

Lehmkuhl's opinion, therefore, seems just and equitable, namely, that in a case of "cessio bonorum," the discharge of the court is not sufficient of itself to wipe out the conscientious obligation of paying the remainder of the debt out of future acquisitions. Other conditions must be present, from which it may be inferred, with at least reasonable probability, that the creditors renounce further claims against the debtor.

The question remaining to be settled, therefore, is this: Are there, in reality, present in business transactions circumstances and conditions from which it may be gathered that business people enter into a tacit agreement to accept, in case of a bona fide failure, the assets

in full settlement for the debts owed them? We think they do. We have reason to believe that this is the persuasion of conscientious and honorable business men, both Catholic and non-Catholic alike. Conscientious and honorable business men, who feel a keen sense of duty to pay dollar for dollar for money borrowed or for work done for them, feel no such sense of duty to pay, later on, out of their future acquisitions, the remainder of their debt to, for instance, wholesale houses after a bona fide failure and a discharge in bankruptcy. A wholesale house, for example, is fully aware that among its many retail patrons, the number of failures, on an average, will reach such a figure every year. To secure themselves against this loss, among many other measures that they take, is this that they charge a higher price for their goods than they would otherwise charge, or be justified in charging, were there no bona fide as well as fraudulent failures. Thus, if A, a retail dealer, fails in business and makes an assignment in favor of his creditors, who are the wholesale houses, it is in reality A's fellow retail dealers purchasing from the same wholesale house who make good the amount that A is unable to pay by paying a higher price for their goods, in view of such failures as A's. This is true of most lines of business. For instance, insurance companies protect themselves against loss by fraudulent fires by charging a uniform higher rate for insurance than they would be justified in doing were there no fires of incendiary origin. The policyholders all tacitly agree to pay more for insurance in order to protect them against loss inflicted by some of their number.

We do not see, therefore, how Mr. X can be obliged in conscience to pay in full out of his future acquisitions the debts he owed the wholesale firms. There seems to be a reasonable doubt of his obligation to pay. And with such reasonable grounds for doubting whether Mr. X is bound in conscience, it would be unreasonable to impose

such a burden on him. Of course, as Father Konings remarks, "certo certius, ut damnificatores formaliter injusti tenentur, qui culpa sua gravi in necessitatem illam, cedendi scil, bonis suis, venerunt."

We suppose that Mr. X has not failed through any grievous fault of his own; and, moreover, that he has done all that he tacitly agreed to do, in the event of his bona fide failure, viz., he has turned over conscientiously all his assets for the benefits of his creditors. Therefore, being *certainly* discharged *in person* by the court, he is also *probably* discharged *in conscience.*

It is quite different with Mr. X's other two creditors, namely, the man from whom he borrowed $4,000 and the dressmaker. With these he is obliged in conscience to settle in full out of his future earnings. For he had no such understanding with these as he had with those. The discharge of the court does not, of itself, discharge the conscience. There are no other conditions or circumstances present, however, on which a discharge in conscience might be argued, even with probability. Therefore, for these two latter debts Mr. X must in conscience settle from his future earnings.

When he has done this his conscience may rest easy. Here again we must remark, with Lehmkuhl and Crolly, "id omnino requiri, ut ipse etiam prorsus secundum leges agat, neque minimum quidquam in suum favorem sibi permittat, ultra id quod leges concedant."

XLI. INTERPELLATION IN THE CASUS APOSTOLI.

The Congregation of the Inquisition has given a dispensation from the interpellation demanded for the Pauline privilege, in connection with an interesting case proposed by an American bishop. The case is as follows: George, now fifty years old, and living in the diocese of the petitioning bishop, married Bertha, both being unbaptized; as a result of this marriage they had four children, who are still living. Eight years later Bertha showed many indications of insanity, so that it became impossible to live with her, and she was committed to an asylum for the insane.

Six years afterward, as there was no hope of her recovering sanity, George obtained a decree from the civil courts adjudging his marriage null and void from the beginning on the grounds of the woman's insanity, which several physicians testified was caused by a hurt which she had received when only ten years of age.

George, still unbaptized, then married Caroline, a baptized non-Catholic. He is still living with her; they have had several children, of whom one is living. The insanity of Bertha has gone so far that she does not recognize her own daughter, and imagines that she herself is Queen Elizabeth.

Now George (twenty-nine years after his first marriage, with Bertha, and fifteen years after his marriage with Caroline) has become a Catholic, together with his wife and whole family, with one exception; and, therefore, he desires that the Holy See might, by its supreme power, grant him deliverance from the bonds of his marriage contracted in unbelief with Bertha.

The fact that George was never baptized is clearly proven from the testimony of many altogether trustworthy witnesses, who have

sworn that they often heard his mother say to her brother that George was not baptized, and how bad she felt about it. Besides, there is no record in the register of his baptism, though records of others baptized at the same time are found.

The non-baptism of Bertha is not of equally absolute certainty, though there seems to be a moral certainty that she was never baptized. Her sister, who is eighteen years older than she, testified under oath that she was altogether certain that her sister was never baptized, because they did not believe in any religion, and never professed Christianity.

Therefore, at the utmost there was between George and Bertha only a natural marriage contracted in infidelity; or, if Bertha were baptized, since George certainly was not, there was no marriage at all, on account of *Disparitas Cultus.*

Follows the opinion of the Matrimonial Court of the diocese: It is decided that this Court has not legitimate jurisdiction to settle this case, but recourse must be had to the Holy Apostolic See for a final adjudication. But the court is strongly of opinion that the weight of testimony is in favor of the validity of the first marriage, on account of the absence of baptism in both parties.

But since George is now baptized a Catholic, he has the right to interpellate his first wife Bertha, and since there is no use in doing this on account of her insanity, this Court believes that a petition should be sent to the Holy See, that it may exercise its supreme apostolic power to dissolve the marriage contracted in infidelity between George and Bertha, so that George can make regular and valid his second marriage with Caroline. Hence the Court asks in their behalf the clemency of the Holy See, because they were married in good faith, and since their baptism they have lived as brother and sister, awaiting the decision of the Holy See. The *Defensor Vinculi*

subscribes to the opinion and petition of the Court. Accordingly, the bishop asks his Holiness for a dispensation from the interpellation to be made to Bertha, so that George may contract a lawful marriage with Caroline.

The Congregation decided that his Holiness should be asked for a dispensation from the interpellation to be made to Bertha, so that George might contract matrimony validly with Caroline. This was granted December 10, 1903.

XLII. DE DISPENSATIONE AB IMPEDIMENTO MIXTAE RELIGIONIS.

The following *Casus* was proposed and solved in Rome, in the *Apollinaris*:

Bertha, a Roman maiden, was on a pleasure trip through England with her father, a widower. After a month spent in visiting various parts of the country, she chanced to meet with Titius, a wealthy Protestant, resident of the place of their meeting. The latter, conceiving a strong affection for Bertha, asked her hand in marriage of her father, who was willing to grant the request, placing only one condition, to which Titius willingly assented, viz.: that he (Titius) would take up his abode in Rome, in order that the devoted father might not be separated from his only daughter.

Bertha, however, remembered that there stood in the way of the union the *impedimentum mixtae religionis;* nor did she lack the courage to speak of it. On the contrary, she promptly went with her father and Titius to submit the case to the bishop of the locality, who had faculties for dispensing from such an impediment.

The bishop, being informed that Titius was willing to make the promises required by the Church, granted the dispensation and gave the necessary authorization to Caius, a priest, a friend of Bertha, to marry the couple. Caius, in order to please the latter, performs the ceremony in the chapel of a convent of which he is the chaplain; and immediately afterward says *the Mass of the day*—not the Votive Mass, *pro sponso et sponsa.*

After this Titius wishes to appear before a minister of his own denomination and repeat the ceremony. Caius, being consulted by Bertha, says that this may be done, *extra templum,* and provided,

furthermore, that the minister uses no religious vestments or ceremonies, *quia tunc deest ratio prohibitionis, nempe communicatio cum haereticis in divinis.*

Bertha, following the decision of Caius, yields to the desire of Titius.

1. Who can dispense jure proprio from the impediment mixtae religionis?

2. What about the action and decision of Caius in the case?

Ad Primum.—The impedimentum mixtae religionis, which has long existed in the Church, is *a general law.* Hence the Pope alone can dispense from it *jure proprio.* Bishops can not, since the following general principle here obtains: "The inferior has no power over the law of a superior." This is confirmed by an instruction given by the Papal Secretary of State, November 15, 1858, in which it is expressly said "ad quam (Apostolicam Sedem) *unice spectat* potestas dispensandi super hujusmodi impedimento *mixtae religionis.*"

While the bishop ex jure communi has the faculty—quasi-ordinaria—of dispensing in the case of some other non-diriment impediments, he does not enjoy that faculty in the case of the impediment here in question. Pius VII, in a Brief dated February 17, 1809, and addressed to the bishops of France, says that up to that time the Holy See had always refused to grant this faculty to bishops, especially in Europe, though it had been asked for with the greatest importunity. Now, however, by special indult, but still with some reluctance, this faculty is granted, especially for those places where there are many heretical sects, and particularly for sparsely settled districts, either for a definite time, or for a determined number of cases, by the Congregation of the Holy Office or of the Propagation of the Faith.

With regard to Caius, the priest who performed the ceremony in the chapel of the convent of which he was chaplain, his action was

not lawful, for Canon 1109 states that the Ordinary shall not allow the celebration of marriage in churches or chapels of religious women, except in a case of urgent necessity. From the context it also appears that he used for the ceremony the rite prescribed in the diocesan ritual. He cannot be blamed for so doing, if we suppose that the bishop had approved for the diocese, or at least tolerated, that form of ceremony for mixed marriages generally. But the celebration of Mass, even though it was not the votive *pro sponso et sponsa,* but the one of the day, can in no way be justified if, as seems probable, it could really in the circumstances be considered as forming a part of the nuptial ceremony. If, however, it could not, and was celebrated after the ceremony merely to satisfy the devotion of the bride, it was allowable, especially as it took place in a private chapel. This would be the case if, for instance, the Mass at which the married couple assisted was the ordinary Mass celebrated at that hour every day in the convent, and the chaplain had simply made arrangements so that on this occasion it was preceded by the marriage ceremony. In such a case the Mass could not be said to have been celebrated for the married couple—rather they were obliged to arrange matters so as to assist thereat, possibly with no slight inconvenience to themselves. Finally Caius, asked by Bertha if she might, in deference to the wishes of her husband, go with him to have the ceremony performed by a Protestant minister, replied that she might do so, provided it be not in a church and that no religious rites or vestments be used, "for," he added, "in that case the motive of the prohibition will be wanting, viz., *communicatio in divinis cum haereticis.*"

As to this point, it must be granted that some serious theologians and canonists take the same view as Caius, and for the same reason. Gasparri (de Matr. Vol. I. n. 467) gives that solution to the case

exposed above. Supposing, for instance, that the minister in lay clothing, and not in a church, were to wish happiness, etc., to the married couple, recalling the rights and duties of the state of life upon which they had entered, without pretending to add thereby anything sacred to the marriage already performed, and supposing, of course, that the Catholic party does not look upon this as in any way a completion of the same, but simply as an act of complaisance toward the non-Catholic, whether the latter looked upon it as a sacred ceremony or not (Vechiotti III. Sec. 98).

It is true, that it is not here question of a mere *civil* assistance, for the contracting parties go before a heterodox minister *ad sacra deputatus,* but, on the other hand, it is also true that no heretical religious ceremony is performed, and consequently no real *communicatio in divinis.* However, care should be taken to avoid scandal, and this could be secured if the faithful were instructed as to the real motive and significance of the action of the couple in the circumstances.

Other theologians (v. g. Genicot II. n. 520) think that such an act could hardly be free from the appearance of at least an external adhesion to a heretical sect, and could not be allowed, since there would be an implied recognition of some religious authority in a non-Catholic minister.

Note: If the civil law does not make it necessary to approach the minister so as to have the marriage recognized by the state, Canon 1063 forbids marriage before a non-Catholic minister. In that case the parties go to him as minister of religion, not as an official of the state, and the fact that they do not allow him to use any ceremonies of his religion does not excuse the Catholic from the law of the Church, for the repetition of the marriage contract is a religious act.

XLIII. SUDDEN SICK CALLS.

Titus is hurriedly called to the bedside of a dying man, who desires very earnestly to see him. Taking the Blessed Sacrament and the holy oils, he hastens to the house of the sick man, only to learn that just as he crossed the threshold of the house the dying man had passed away. Having the Blessed Sacrament with him, Titus did not tarry longer, but returned immediately to the church.

On another occasion, being summoned to a sick person, Titus, on entering the sick chamber, finds the patient just breathing his last. He quickly pronounces the words of absolution over him. But before he can administer Extreme Unction the pulse and heart have ceased to beat, and Titus, concluding that the man was dead, returned home without administering Extreme Unction.

Reflecting on these cases, Titus makes up his mind that in the future, whenever he receives a sudden sick call, he will pronounce the words of absolution over the sick person when within twenty paces of the house, in order to be able to proceed to the administration of Extreme Unction immediately on entering the sick chamber.

Answer.—It is hardly necessary to say that a person who is *certainly* dead can not receive any Sacrament, neither sacramental absolution, nor Extreme Unction. To absolve or anoint a person who, beyond doubt, is dead would be a sacrilege. It would be a grievous desecration of the Sacramental rite and a mortal sin. But if there be any reasonable grounds for doubting whether the person be really dead or not, then the priest not only *may*, but *must* administer, conditionally, of course, Sacramental Absolution and Extreme Unction. That a person is, in every case, really dead when he ceases to breathe is by no means certain according to expert medical testimony.* In

*Cf. the chapter "The Moment of Death," in Sanford's Pastoral Medicine.

the case of normal death, where the person has been sick for some time and gradually sinking, only a few moments, at most, will intervene between the cessation of respiration and actual death. But in cases of sudden and violent death, as, for instance, drowning, asphyxiation, etc., the last visible sign of life may have disappeared long before death occurs.

Dr. Gourand, a well-known Parisian physician, with large hospital experience, writing in the "Bulletin de la société médicale de S. Luc, S. Come, S. Damian," 1895, says, àpropos of the question of administering the last Sacraments, that it is physiologically wrong to conclude that actual death has occurred because respiration has ceased. It used to be thought, he says, that when the breathing had ceased the heart action also had ceased, and, therefore, that death had occurred. It is comparatively easy to verify the cessation of breathing, but difficult to determine just when the heart has finally ceased to act. "It is incontestable," he continues, "that a person who, after a long agony, ceases to breathe is, in most cases, dead. But, physiologically, he is not dead because respiration has ceased, but because the cessation of breathing follows, as a consequence, upon the cessation of the action of the heart." In regard to cases where respiration has ceased before the action of the heart has been stilled, he says: "Between the last breath and the final cessation of the heart's action there is often an interval, whose length is determined by the greater or lesser vitality of the cardiac ganglion."

Dr. Capellmann (Pastoral Medicine, Agony) says: "After the last respiration the person is considered dead, although perhaps sometimes minutes elapse before the vital spark becomes completely extinct, the muscles of the heart and of the arteries make, often after the last respiration, some, though feeble, movements. If the agony and the gradual fading away have been observed, we may be

convinced of death some minutes after the last respiration. However, there are some forms of death wherein doubts may be entertained whether death has really taken place." In other cases, as for example, cases of drowning, asphyxiation, great loss of blood, etc., hours may elapse between apparent and real death, or between apparent death and resuscitation.

Father Tanquerey, de Poenit, p. 247, says: "Ex recentibus experimentis constat vitam per aliquod tempus in corpore manere, etiam quando quis ultimum suspirium edere visus est, quia vita non nisi successive a corpore recedit. Hinc quandoque qui apparenter mortui erant, post tres horas *rhythmico linguae tractu,* ad vitam reducti sunt. Quapropter absolvi et inungi possunt, positis ponendis, ii qui tali processu, quaedam signa vitae, saltem sensitivae, praebent; imo sub conditione *'si tu es vivus'* ii qui quamvis mortui esse videantur, juxta ordinaria signa, prudenter a peritis supervivere putantur."

In the light of all this, therefore, we can not endorse unconditionally Titus' method of administering the last Sacraments.

As regards the first case, although the sick person was dying for some time and gradually faded away, and although the attendants had noticed the cessation of respiration, nevertheless Titus could not affirm with certainty that life did not linger still in the heart and nerve centers, for at least the few moments that were required to reach the sick-chamber from the main entrance of the house. On entering the sick-room, therefore, Titus should have immediately pronounced the words of absolution, with the condition "si tu es capax." As regards the administration of Extreme Unction in this case, so much time would be required before the Sacrament could be given that there would scarcely be any reasonable grounds for not concluding that death had occurred before the Sacrament could be administered.

Were this a case of sudden or violent death, like drowning or asphyxiation, etc., Titus should have administered Extreme Unction also, because there was a reasonable probability that life might not be altogether extinct.

In case a physician were present and would not affirm with certainty that death had already occurred, Titus would be justified and even bound to administer Extreme Unction. And if considerable time were required to discover probable signs of life or death, Titus should proceed immediately to administer Extreme Unction, using the shortest valid form, without waiting for any further examination of the patient, because every moment of delay may prove fatal.

In the second case, Titus did well to give conditional absolution. Had he had the holy oils ready, he could have given Extreme Unction immediately after pronouncing the words of absolution, because there was sufficient reason for doubting whether life really became extinct with the last respiration. At least there was a probability that a spark of life might still remain in the body, and therefore sufficient warrant for giving conditional Extreme Unction, although there would be no sufficient warrant under the circumstances for administering the Holy Viaticum.

The resolution that Titus took in consequence of these cases, of always imparting conditional absolution when within twenty paces of the house of the sick person, can not be approved of; rather, it must be condemned. In order to be absolved, the penitent must be morally present to the confessor; and although St. Alphonsus says that if the penitent be no farther than twenty paces distant from the confessor he is morally present and may be absolved, the holy doctor means that both the confessor and the penitent must be in the same room or hall, and must perceive one another by sight or hearing. Even a greater distance than twenty paces would not render the

absolution certainly invalid, although it would jeopardize it. But if the priest be separated from the penitent by a house or a street, or if the penitent occupy a room in the house altogether unknown to the priest, there can be no question of moral presence. In fact, even under circumstances where the absolution *"in distantiam"* would be most likely valid, the confessor would not be justified in administering it always and on all occasions in that way, but only in cases where, unless he administered it in that way, he would not be able perhaps to administer it at all. It is not to be taken for granted that every time the priest receives a sudden urgent sick call it will be necessary to give conditional absolution before reaching the bedside of the dying person. On the contrary, it is to be taken for granted, as a rule, that the priest will be summoned in ample time to administer the last Sacraments to the dying with dignity and decorum. The faithful are to be reminded repeatedly, when necessary, that they should summon the priest in good time. And the priest, on being called to the sick, should not delay in hastening to them. Exceptional accidental cases must be left to the providence of God.

XLIV. CONFESSION OF A DYING PERSON.

Titia, who is thought to be near death, but nevertheless is quite *sanae mentis,* although of very weak memory, is not able to remember any sin, while trying to make her Confession to Cajus, her confessor. To all questions put to her by her confessor, in his endeavor to discover *materia absolutionis,* she answers: "I can not recollect any sin, not even from my past life." But she desires very much to be absolved, and to receive the Holy Viaticum and Extreme Unction. As there would evidently be danger in delay, Cajus accedes to her wishes, and absolves her, afterward giving her Holy Communion and anointing her.

Quaeritur.—Did Cajus do right? Or should he have absolved her on the explicit condition, "Si peccata commisisti?"

Solution.—I. Principles.—Material integrity is not always required for a good Confession. Formal integrity is always required; that is, as complete a Confession of mortal sins as is morally possible for the penitent at the moment of Confession. Very often this formal integrity is the only integrity possible, and therefore the only integrity required for a good and sufficient Confession. The Council of Trent, in the 5th chapter of the 14th session, speaks of the integrity required for a good Confession, and meets the objection of the Reformers that Confession as required by the Church is an impossible thing. Following are the words of the Council: "Constat enim, nihil aliud in ecclesia a poenitentibus exigi quam ut postquam quisque diligentius se excusserit et conscientiae suae sinus omnes et latebras exploraverit, ea peccata confiteatur, quibus se Dominum et Deum suum mortaliter offendisse meminerit. Reliqua autem peccata, quae diligenter cogitanti non occurrunt, in univer-

sum eadem confessione inclusa esse intelliguntur, pro quibus fideliter cum propheta dicimis: Ab occultis meis munda me." The reason of this, of course, lies in the fact that Almighty God does not require anything impossible of us. The Confession is *formaliter integra,* when the penitent is honestly minded to confess all mortal sins, according to their number and their kind and the circumstances that change their nature, and does his best to make as full a Confession as he can, although for some reason, beyond his control, v. g., *oblivio inculpabilis,* he does not make a *materialiter integra* confession. Only, it is required of him that when the obstacle to a *materially* complete Confession is removed, he must make his Confession *materialiter integra.* Pope Alexander VII., September 24, 1665, condemned the following proposition: "Peccata in confessione omissa seu oblita ob instans periculum vitae aut ob aliam causam, non tenemur in sequenti confessione exprimere."

Further it must be remarked that no difficulty intrinsic to Confession, inherent in its very nature, as for instance, the shame or confusion experienced in confessing our sins, is ever a sufficient reason for making a *materially* incomplete Confession. For since our blessed Lord has ordained that we must confess all mortal sins to his lawfully ordained representatives on earth, therefore he has also ordained that we must take upon ourselves whatever hardships are inseparable from such Confession, which hardships may serve as a penance for sin, and are very wholesome and salutary for the penitent. Thus the shame and confusion that a penitent may feel while confessing his sins, or the hardships that we are known personally to the confessor and that there may be a falling off in his esteem for us, would be no excuse for making an incomplete Confession. For were such reasons sufficient to justify an incomplete Confession, then the faithful would easily persuade themselves that

they were justified in making an incomplete Confession, and this divine ordinance would fail, to a large degree, of its purpose, or, as Gury expresses it: "Ratio est quia confessio ex natura sua est essentialiter laboriosa ac proinde si difficultas gravis, v. g., magna repugnantia aut verecundia, ab integritate excusaret, plerumque ab accusandis mortalibus excusarentur fideles et proinde rueret ex maxima parte institutio sacramenti Poenitentiae. Praeteria Ecclesia non posset reservare crimina atrocia, quia id incommodum non leve poenitentibus creat" (II. n. 497). Neither would the great number of penitents excuse one from the material integrity required in the Confession, "concursus magnus poenitentium non excusat," v. g., on a great feast day, or the occasion of a plenary indulgence during a jubilee. Pope Innocent XI, on March 2, 1679, condemned the following proposition: "Licet sacramentaliter absolvere dimidiate tantum confessos ratione magni concursus poenitentium, qualis, v. g., potest contingere in die magnae alicujus festivitatis aut indulgentiae." That confessor would be guilty of sacrilegious conduct, indeed, who, on the occasion of a great crowd of penitents, would dispense them from the obligation of making a *materialiter integra* Confession, and would grant absolution after the Confession of one or another mortal sin. Any handbook of moral theology may be consulted on this matter.

II. Application of Principles.—In the case, as stated above, Titia is conscious, in a general way, that she is guilty of sin, and in this conviction she accuses herself, giving evidence of a contrite heart, and praying to be absolved. That she confesses no sin in particular arises from the fact that her memory is weak, and perhaps also from want of sufficient religious instruction, but it has not its reason in any false shame or sinful negligence. For it not seldom happens that many are so uninstructed, and of such poor intellectual parts,

that, although they know in a general way that they have sinned, and express true sorrow for their sins, they nevertheless are unable to recall any sin in particular. This class of penitents is not to be confounded with another class, namely, those penitents that imagine they have no sins, because they are blinded by self-conceit. We argue, therefore, that in the present case, Titia has made a *formaliter integra* Confession, in as far as she gives evidence of true contrition for her sins, and by praying to be absolved makes a Confession of her sins in as far as it is possible for her under the present circumstances. "Ad impossibile nemo tenetur" must be applied in this case. She does the best she can, considering her condition, and that is all that is required of her.

Tappehorn, in his able work on the Sacrament of Penance, says: "If the particular sin can not be remembered or confessed, it will suffice to indicate its species; if this is impossible, it is sufficient to confess that one has sinned mortally, although one can not remember or confess in what particular way." The confessor, therefore, ought to absolve Titia unconditionally. "Absolvi potest et debet, et quidem absolute, quilibet moribundus, qui aliquo modo, voce vel signo, confitetur vel absolutionem petit. Ratio est quia adsunt omnia requisita ad Sacramentum et ad confessionem *formaliter* integram." (Gury, II, n. 505; St. Lig. n. 408.)

The expressed wish to be absolved contains in itself a Confession that one has sinned. If now the confessor, in imparting absolution, adds the condition, "si peccata commisisti," then he sets at naught the penitent's Confession, and in this he is not justified.

XLV. MARKS OF FRIENDSHIP TOWARD AN ENEMY.

John Smith, a wealthy and prominent Catholic, accuses himself in Confession of being on very bad terms with one of his children. It appears that one of Mr. Smith's sons, a young man of rather unsteady habits, married, over a year ago, a vaudeville actress, a non-Catholic, and from all accounts a young woman of Bohemian antecedents and proclivities. As Mr. Smith and his whole family were very much opposed to this marriage, and did all in their power to stop it, but to no purpose, they feel very much grieved by it, and refuse to have anything to do with the young man or his wife. Mr. Smith has cut the young man off in his will, has forbidden him his house, recently refused to allow him to be present at the parents' golden wedding, although all the other relatives were present; refuses to recognize the young man either in public or in private, to return his salutations or to permit any advances to be made toward a reconciliation, either by the young man himself, or by his friends.

Quaeritur: Is Mr. Smith's conduct justifiable before God, or is it sinful?

Principles: This case comes under the heading "de amore inimicorum." The law of charity imposes a twofold obligation on us in regard to our enemy. First, we must not wish him evil; second, we must wish him well.

First: We must not wish our enemy evil; that is, we must not repay evil with evil, nor cherish a spirit of revenge toward him. We must pardon the *personal* offense when requested, not always immediately. Sometimes there may be just cause for deferring pardon in order to manifest the pain we suffer by reason of the offense. Sometimes, even, we may be obliged to make the first ad-

vance toward a reconciliation, to prevent scandal or to save our enemy from sin, when we can do so without much trouble to ourselves.

Second: We must wish our enemy well; that is, we must include him in our prayers. We must succor him in his needs, as we would any one else. And if we exercise charity indiscriminately toward a large number, we must not exclude our enemy, for this would be a mark of revenge; and if special ties of blood, etc., unite us, we are bound to give such evidence of good will toward our enemy as we give to others who are bound to us by the same ties. But special marks of friendship that we owe to no one in particular, either by reason of their personal condition or the customs of the country, we are not obliged to show to our enemy.

Here we must remark that it is one thing to harbor a spirit of revenge, and quite another thing to desire the reparation of outraged rights. It is perfectly legitimate to desire the restoration of our good name, or the restitution of our stolen property, and to take action at law to obtain them; yes, even to take criminal proceedings against the offender to have him punished. If this is done out of love for justice, it is quite in keeping with the law of charity. If it is done from a spirit of revenge, it is, of course, sinful. Once satisfaction has been made, we must forgive the *personal* offense. *Until* satisfaction has been made, this is not required of us.

Regarding the question of *saluting* those who have grievously offended us, the doctrine of St. Liguori, Tamburini, Mazotta, and others may be summed up as follows: We are not obliged to salute those who have wrongly offended us, unless they make the first advances, unless it be question of a superior, or unless to refrain from saluting our enemy for a long time could be interpreted as a mark of hatred. But if our enemy greets us first, we are bound to

greet him in return, except once or again we might be justified in refusing to recognize a greeting in order to show our feelings have been hurt. In a word, the omission of the ordinary greetings and marks of good will that pass among men must be taken, sometimes on account of circumstances, not as a sign of hatred or revenge, but as a "manifestatio justi moeroris tantum." If, therefore, on account of the circumstances, the denial for a time of the ordinary salutations and greetings must be interpreted as a manifestation of wounded feelings, and if in fact the denial proceeds from no spirit of hatred or ill will, such denial is not sinful. If, however, under the circumstances, the denial of the ordinary marks of good will must be interpreted as a sign of hatred or revenge, *"pro manifestatione vindictae et inimicitiae,"* then such denial is sinful, even though it do not arise from feelings of hatred or revenge.

Application of principles: Mr. Smith's son had become his enemy. He had given his father just cause for feeling hurt and outraged. He had done his father and his family a grievous wrong. Although an enemy, we must not forget the special ties of blood that unite them. Was Mr. Smith's conduct toward his son justified in every instance? We must take each separate count by itself.

First, Mr. Smith cuts off his son in his will. Is this act *"contra justitiam,"* or only *"contra charitatem,"* or wholly blameless? Whether this cutting off of children by parents in their wills be contrary to the virtue of strict justice does not appear. Some theologians think it is; others that it is not. Fr. Genicot thinks that it is not. Fr. Lehmkuhl thinks that it is. Genicot says: "Nec putaverim graviter peccaturum parentem qui, *absque justa causa,* uni filio prae aliis faveret, ut opinatur Lehmk." (I. n. 677).

"Si quis ex odio vellet solam legitimam (portionem) filiis relinquere, vel fratres non indigentes omnino praeterire, is sub gravi

obligandus esset ut hoc odium deponeret, *hortandus* tantum ut illis aliquid amplius relinqueret; nam utitur jure suo" (ibid.).

Lehmkuhl thinks that where there is no "clara et justa causa," parents sin against justice in preferring some children to others (I. n. 1155).

De Lugo thinks that it is not against justice: "Quare moribundum fratribus nolentem aliquid relinquere vel filiis non nisi legitimam, cogere debet confessarius, ad deponendum odium, si forte ex odio vel vindicta moveatur, hortari etiam, ut eis consulat; non tamen ideo negare debet absolutionem nolenti, si non sit talis gradus necessitatis, in quo debeat personis adeo sibi conjunctis subvenire" (disp. 24. n. 175).

Mr. Smith's action, therefore, in cutting off his son, is not evidently against justice. Is it against charity? If it is prompted by hatred or revenge, it is and grievously so. If it is not prompted by hatred, but by the fear that the son may abuse his inheritance, it is not. The laws of this country leave the father free in bequeathing his goods to his children. In this case the evidence favors the father. The son's past history promises poorly for the future. The son will, in all likelihood, be the better for being disinherited. The father's act, therefore, can hardly be interpreted as evidently against charity. Still it were much wiser if the father made some provision for his son, an annual allowance that could not be abused. In regard to forbidding the young man his house, we must distinguish. If the young man has reformed or is trying to reform, Mr. Smith may forbid him his house *for a time,* to give expression to his outraged feelings. But a year is certainly a safe limit. The young man has a home of his own now, and no longer the same claim on his father's house. Still, to continue to refuse him admission savors of hatred and revenge, and the father must desist under pain of being denied

absolution. As long as the son refuses to reform, the father is not obliged to receive him.

That Mr. Smith refused to invite the son to his golden wedding may have been simply a measure of prudence. The son's presence would very likely have caused trouble, recriminations, and perhaps a general scandal; certainly if his wife were to attend.

If, however, the young man and his wife had both turned over a new leaf, this would have been an excellent occasion for bringing about a good understanding, and unless serious difficulties were apprehended, Mr. Smith could hardly have refused them an invitation without committing sin.

The same is to be said about Mr. Smith's refusal to recognize his son in public or in private. If the son continues in an evil course, Mr. Smith may continue to give expression to his sorrow by refusing to recognize him. If the son has reformed, Mr. Smith is obliged in conscience to recognize him. He may refrain for a time, say for a few months, from recognizing the son, but to continue to do so must be interpreted in the light of hatred or revenge. And his continued refusal to return his son's greetings or to open the way for a reconciliation renders Mr. Smith unworthy of absolution. It seems evident from the case that Mr. Smith is of a stern character, and no more should be required of him than is absolutely necessary. But what is required by the law of God should be insisted on with great firmness, because a man of this character easily deceives himself by believing his conduct to be prompted by a love of righteousness and justice, whereas it is prompted by a spirit of animosity and revenge.

XLVI. THE OBLIGATION OF RESTITUTION, ARISING FROM CONCEALING THE REAL VALUE OF AN OBJECT AND THEREBY DEPRECIATING ITS PRICE.

Mr. A. is a dealer in works of art and antiques. Once a year, or oftener, he makes a business trip to Europe, to purchase a new supply of goods. He is an expert in the business, and knows to a nicety what an article of this kind is worth, and what price it will bring in the American market. Now, it often happens that Mr. A., in order to purchase some article at a bargain, conceals its true value from the owner, often insisting that it has very little or no value, and thus succeeds in purchasing for a trifle, pieces that he knows are worth a great deal, and which he afterward disposes of for many times the price he paid for them. In this way he is making considerable money, but sometimes has misgivings about his methods of making it. What judgment, from the view-point of good morals, are we to form of Mr. A.'s business methods?

Mr. A. is certainly bound to restitution, provided his conduct in the purchase of goods is really deceiving and unjust. Whether his conduct is really such in each and every instance, will appear from the following considerations, as also the extent of his obligation to make restitution.

1. Mr. A. conceals from the owner of the piece of furniture or art its true value, which it possesses by reason of its age or workmanship, etc. He simply remains silent about it. He is careful to drop no remark that might arouse suspicions in the owner as to its real worth. Now we ask, Is Mr. A. bound in conscience, in every instance, to enlighten the owner of a work of art as to its real value? Fr. Lehmkuhl (I. 1120) has this to say on the subject: "Pretium

conventionale . . . admitti potest in rebus quae apud veteramentarios existunt, modo ne dolose et fraudulenter procedatur: quare si inter res viles detegitur res pretiosa, videndum est, utrum singularis sit notitia emptoris, an communiter qui viderint illam rem, eam pro pretiosa habeant, adeoque potius singularis sit venditoris aut paucorum imperitorum inscitia. Si posterius obtinet, vilissimum pretium non censetur justum; si prius, non injustum censetur. Quare facile admittitur, ut vetustos libros, etsi detegam, eos esse magni valoris, si modo doloso non agam, viliore pretio mihi comparare possim." That is to say, if the purchaser's knowledge, in this particular business, is altogether exceptional, he may profit by it. If the purchaser's knowledge is not exceptional, but the ignorance of the owner of the work of art, etc., is quite unusual, then the purchaser may not profit by his knowledge, because what he profits by, then, is in reality not his own knowledge, but his neighbor's exceptional ignorance.

This is also the view of Fr. Noldin, S.J., professor of moral theology in the University of Innsbruck. Dealing with the same case, which we give above, he says: "Si unus contrahentium verum rei valorem cognoscit, alter ignorat, ita distinguendum est; venditio injusta est, si verus rei valor facile ab omnibus peritis cognoscitur; venditio autem justa est, quando verus rei valor solum ab emptore ob singularem ejus peritiam detegitur." And he gives the reason as follows: "Ratio primi est, quia pretium vulgare, quod communiter a peritis determinatur, majus est. Ratio secundi est, quia res communiter non pluris aestimatur" (The. Mor. II., n. 589).

If Mr. A., therefore, *ob singularem ejus peritiam,* being an expert, alone knows the value of the object, and he leaves the owner of it in ignorance of its real value, and thus succeeds in buying it for little or nothing, only to sell it later on for a very handsome

price, he does not commit any injustice against the owner. Because, under these circumstances, the object has little or no value for the owner, since the value put upon it by those versed in such matters is very small. Mr. A. is not responsible for the ignorance of the owner. He did not deceive the owner into offering the object for a very small price, and can not be considered, therefore, the *causa efficax* of the *lucrum cessans,* which the owner might have enjoyed if he had known the article's true value. Therefore, Mr. A. is not bound to restitution for this part of his conduct.

2. But how stands the case with regard to the rest of Mr. A.'s business methods? Mr. A. not only conceals the true value of the goods he intends purchasing, by observing a profound silence, but he *positively* contributes to lead the owner into error, in order to profit by it. Can we also, in this case, maintain that Mr. A.'s conduct is not a *causa efficax damni,* and, therefore, does not create an obligation to restore? Even here we can excuse Mr. A. from the obligation of restitution if what he did amounts to nothing more than an effort, common to all barter, to purchase goods as cheaply as possible. That is called a *trick of trade,* and in itself does not constitute an act of injustice, even though a less experienced seller might sometimes be induced by it to sell an article cheaper that he would otherwise have sold it, provided the price paid may still be considered a *justum pretium.*

St. Alphonsus says: "Hinc etiam advertendum, quod communiter non praestatur fides mendaciis vendentium, dum satis noscuntur, haec esse communia stratagemata; unde ipsi regulariter non tenentur, ob id ad restitutionem, ut Salm. etc. Dixi: regulariter, quia si aliquando venditor certe animadverteret emptorem mendaciis credere et ideo majoris emere, tunc quidem ab injustitia is non est excusandus" (Theol. Mor. iv., n. 805).

What the Holy Doctor says here of the seller who by false exaggerations endeavors to deceive the purchaser, and thus receive a higher price for his goods, we may apply to the case of the purchaser who, by false representations, induces the owner of a work of art, for instance, to part with it at a price far below the lowest *pretium justum.* In this case Mr. A. can scarcely be excused from the obligation of making restitution. By false and unjust representations, he procures an article at a price far below any actual value it possesses. His profit can not be ascribed, in this case, to any exceptional knowledge he possesses, but only to his mendacious representations. He is, in fact, positively cheating his neighbor. "Ratio est, quia emptor (ut jam per se patet) non minus tenetur servare justitiam commutativam in contractu, quam venditor; ergo sicut venditor non potest, salva conscientia, plus acceptare, quam justum pretium exigit, ita emptor non potest minus dare, quam limites justi pretii exigunt" (Elbel. vi., n. 179).

XLVII. RESTITUTION TO A RAILROAD COMPANY.

Titius, a traveling salesman, is more or less intimately acquainted with a number of conductors on the several railroads over which he travels on his business trips. Now, whenever he rides with one of these conductors, he does not pay the usual fare for the distance he travels, but instead he hands the conductor a dollar bill, which is much less than the fare, for which the conductor gives him no receipt, in order not to be obliged to turn it in to the company, but to keep it for himself. In this way Titius has defrauded the several railroads in the last few years, to the extent of several hundreds of dollars.

Now, it is asked:

1. What constitutes *materia gravis,* when stealing from a corporation?

2. When do small thefts coalesce, and create a grave obligation to restore?

3. Did Titius commit a mortal sin from the start, or only after he had, *de facto,* taken a considerable sum?

4. Was he also responsible for what the conductors stole?

1. The good of society at large, as well as the good of the individual, require that the members of society shall enjoy complete security in the possession of their earthly goods. Unless peace and concord reign among the individual members of a state, civilized life would become impossible. But the peace and concord required to make life tolerable would be impossible were the individual members of society free to steal from one another. And all human society would fail of its purpose were property rights not inviolable, because the greatest if not the only inducement held out by society to

its members to promote industry and to encourage sustained labor and effort is precisely the security that the state guarantees to its citizens in the possession of the fruits of their labor.

The stealing, therefore, from a private individual of a sum sufficient to jeopardize the peace and concord that should reign among private members of society in the possession of their property, and which would therefore cause grievous injury to the individual, will constitute a *materia gravis,* and be forbidden under pain of mortal sin.

Now, although the amount stolen from very rich persons and from great corporations may not do the said persons or corporations a grave damage, and therefore might seem to be a venial sin only, nevertheless the security of property, which must necessarily obtain in every civilized state, requires that the stealing of a considerable sum, even from a corporation, shall constitute a grave transgression. For if the stealing of a considerable sum from very rich persons or from large corporations were only a minor misdemeanor and a venial sin, these thefts would multiply rapidly, as, for instance, the adulteration of goods, the falsification of weights and measures, the defrauding of insurance companies, railroad corporations, State treasuries, etc., and thus incalculable injury would be done to society at large by destroying the confidence and trust and good faith on which commerce and trade and business enterprise of every kind depend. An amount must be fixed, therefore, to exceed which will be always and in all cases a grave transgression and a mortal sin, no matter from whom it is stolen, because a grave injury is thereby done to the security of the State and the interests of its citizens.

To fix this amount in dollars and cents is one of the difficult tasks of moralists. To say, in a general way, that whenever the amount stolen, although not inflicting a serious injury on the individual

owners of, say, a railroad, still is sufficient to place in jeopardy the peaceful possession of property and render the State insecure, it is a *materia gravis* and a mortal sin, does not help much to a solution of the difficulty. For when we come to estimate *in money* the amount of damage that constitutes a *materia gravis,* we discover an *ingens auctorum dissensio.* The authorities on this matter are agreed that when the sum stolen belonged to a number of owners, all constituting one moral body, as, for example, a railroad company, the sum must be *absolute gravis,* that is, the sum taken must not necessarily inflict a grievous injury on the individual holders of stock in any particular company directly, but only on the State directly by rendering property insecure, and through the State indirectly on the stockholders.

But what the *materia gravis* amounts to, when estimated in money, is difficult to determine with precision. One reason for this difficulty is the fluctuating value of money, or the varying purchasing power of money throughout any given period of time, as is apparent from the history of money in the United States and Europe for the last century. It is estimated by skilful economists that the purchasing power of money has suffered a decline of from 30 to 40 per cent. in the last one hundred years. Another reason for this same difficulty is the difference in purchasing value of money in different countries at the same time. Thus the same amount of money will purchase less in the United States than it will in Europe, as American tourists know to their comfort. Thus the estimates given by moralists, as to what constitutes *materia gravis* in this matter, depend largely on the time and the country in which they live. Father Konings, C.SS.R., who understood American conditions well, thinks that $10 constitutes a *materia gravis* when taken from very rich persons or great corporations. Father Tanquerey, S.S.,

thinks that $7 or $8 is a *materia gravis.* Fathers Sabetti, S.J., and Lehmkuhl, S.J., think that $5 is a *materia gravis.* Palmieri, S.J., thinks that even for Europe 100 francs, or over $19, is required to constitute a *materia gravis.* His words are: "Audivi alios viros doctos, qui ob valde in dies imminutum pecuniae pretium, vellent nunc materiam absolute gravem eam esse, quae centum plus minus francos exaequet, quibus haud aegre assentimus." (Ball. Pal., vol. 1, n. 607.)

From this opinion of Palmieri Father Genicot, S.J., dissents, and thinks that Palmieri exaggerates the decline in the purchasing power of money, and prefers to adhere to the generally accepted opinion of contemporaneous writers. We are inclined to think that Father Konings' opinion is just and reasonable, and that it is safe to say that $10 constitutes a *materia gravis* when stealing from a large corporation, like a railroad company.

2. Small sums stolen by the same person, but at different times, may coalesce, either by reason of the thief's intention, from the very start, of stealing small sums until he acquires a large amount, or else, where there is no intention from the start of repeating the small thefts, but still they are repeated, as occasion offers, then the short space of time intervening between one small theft and another will bring them so closely together as to make them really one moral act, and that grievously injurious. If a sufficiently long interval elapse between one small theft and another, then the victim of them has ample time to recover from the injury done by one before another is inflicted, and therefore is not in the long run injured grievously. What this time limit in which these small thefts must follow one another in order to coalesce is, theologians are not agreed. Roncaglia thinks that these small thefts should not be separated by more than two months in order to coalesce; if they occur

at intervals longer than two months, they can not be said to coalesce and to inflict a grievous injury. St. Alphonsus indorses Roncaglia's opinion. Sometimes an interval of one month, or even less, is sufficient to prevent very small thefts from coalescing. This is the opinion of Ball. Palmieri (n. 78).

A distinction must be made, however, between small thefts committed against individuals and small thefts committed against large corporations. When small thefts are committed against a corporation, they must amount to a sum half again as large as required to constitute a mortal sin if taken at one time from a corporation. Because a corporation is less injured by ten small thefts, done at considerable intervals of time, even though they amount to a considerable sum, than by the single theft of a considerable sum. Therefore, if $10 constitute a *materia gravis* if taken at one time from a corporation, $15 will be required to constitute a *materia gravis* if taken in small sums and at different times.

3. Now, in regard to Titius, there seems to have been an intention from the very start of stealing a considerable sum. If there was, then he committed a mortal sin when he first formed this intention, because the intention was *graviter peccaminosa.* A grave obligation to restore, however, did not arise for Titius until he had accumulated about $15. Although Titius, over and above the mortal sin he committed, when he formed the intention to defraud the railroad company, committed a new mortal sin each time that he stole a small sum, because he put into effective execution an intention that was mortally sinful, still *in ordine ad confessionem* he commits one mortal sin by all these small thefts.

4. Titius is also guilty of the sin of co-operation, being a party to the thefts that the conductors committed. He would be bound also, ***ex hoc capite,*** to make restitution of the sum the conductors

stole, but only *secundo loco.* Practically speaking, however, Titius will not only be quite ignorant of his duty in this respect, but it would be difficult to convince him of it, and still more difficult to persuade him to perform it. Therefore, it will be more prudent for the confessor to say nothing about this latter obligation, and simply to urge Titius to make restitution to the railroad company for what he himself took, leaving him in good faith as regards the rest.

XLVIII. FRATERNAL CORRECTION.

Titius, a young man of otherwise good parts, is becoming very much addicted, of late, to the use of strong drink. His friend Cajus, a young man of the same standing as Titius, perceives this growing habit with alarm, and considers seriously within himself what may be his conscientious duty in the case. Cajus has, on several occasions, taken Titius to task for his excessive drinking, but only in a mild way and with considerable hesitation. Titius' father, a good man, knows that he drinks, and many of Titius' young men friends know it. But they have neglected, up to the present, to remonstrate with him about it, and, in the meantime, the case is becoming more and more aggravated. Cajus is beginning to have qualms of conscience about his duty of correcting Titius, under the circumstances. Is Cajus bound, under pain of mortal sin, to admonish and correct Titius, or may he leave the burden of correcting Titius to Titius' father and friends?

Solution.—Our Saviour imposes on us the precept of fraternal correction, when He says: "Si peccaverit in te frater tuus, corripe eum" (Matt. xviii.), charity demands of us that we rescue our neighbor from grievous evil whenever we can do so without serious inconvenience or damage to ourselves. There is no question here of obligations arising from justice or piety; as, for instance, between pastor and people, or between parent and child. There is question here of an obligation arising from charity, as between private individuals. Now drinking to excess is a grievous evil and a mortal sin, and although mortal sin can not be committed except by the free will and consent of the sinner, still, 1, it may be difficult for the sinner to reform, if left to himself, either because he does not

reflect, or does not realize his condition; 2, the sinner may be led into sin by reason of external causes, from which it may be very difficult for him to extricate himself, unless admonished and assisted by others. There is a graver obligation of saving our neighbor from mortal sin than there is of saving him from serious temporal loss into which he is plunging of his own free will. And yet we are bound, sometimes even under mortal sin, to save our neighbor from worldly loss, into which he is rushing knowingly and willingly, when we can do so, without serious damage to ourselves. By much the more reason, therefore, are we obliged to save our neighbor from serious spiritual injury.

However, in order that there be created a grave obligation to correct our neighbor, the following conditions must exist: 1. We must be sure that our neighbor is committing grievous sin, or at least that he is in danger of committing it. 2. There must be little or no probability that our neighbor, if left to himself, will correct himself. 3. We must have hope of effecting some good by our correction. 4. There must be no one else more fit or equally fit to admonish, and who will, in fact, administer the admonition. 5. There must be no danger of our incurring any serious risk by reason of our admonitions.

If these conditions are verified, then, from the very nature of the case, and according to the unanimous opinion of theologians, there arises a grave obligation of correcting our brother.

However, even here, it must be observed, there is not so much question of correcting a *past* sin as of preventing a *future* sin; that is to say, we are obliged to prevent our neighbor committing grave sin or repeating it, and we are obliged to prevent him remaining a long time in a state of spiritual damnation. Therefore it follows that we are not obliged to correct our brother *as soon as he sins,* not

only because, as a rule, the above conditions will not be verified but also because the sinner himself is not obliged to repent directly he has fallen, but may wait some time; and therefore neither are we obliged to admonish him immediately upon his fall.

Now, on the other hand, there are circumstances which excuse us from the obligation of correcting our neighbor.

1. If there is hope that our brother will rescue himself, in a short time, or that he will not fall again, our obligation ceases.

2. If our correction would only make matters worse we are excused from correcting, except where damage is being done to others or to religion, etc.

3. If it be probable that parents or superiors will administer the correction, then those who are of equal standing with the sinner are released from the obligation.

4. In like manner, if I can prudently judge that some one else, more fit than I, will admonish the delinquent, I am excused.

It is rare that we are obliged to correct some one whom we do not know, because we can not judge what may be the result of our correction. A private person, of easy-going nature or indolent disposition or who is timid and backward, who thinks himself unfit to administer a correction, and therefore omits it, but who is, nevertheless, willing to act, if he thought it quite necessary or profitable, would commit a *venial* sin, by not correcting. Indeed, private persons are rarely obliged to administer a correction, unless they be more or less intimately acquainted, because it is rare that all the conditions creating a grave obligation are present. And seldom, if ever, is an inferior obliged to correct a superior. Scrupulous persons are, as a rule, exempt altogether from the obligation of administering fraternal correction, because they are incapable of distinguishing when there is an obligation to admonish and when there is none. More-

over, on account of their scrupulous nature, they would commit a great many imprudences and torment themselves beyond measure. As a rule, therefore, it is better that they should not correct others, except in extraordinary and very evident cases.

Here we wish to lay stress on a point of considerable importance, in this matter, and that is that it is neither the duty nor the privilege of private individuals to pry into the lives of their neighbors, with a view to correcting them. All writers on this matter call attention to this point. Even superiors are admonished to be moderate and conservative in their scrutiny of the lives of those under them. We are obliged to administer a correction only in those cases that fall under our notice, without our seeking them.

Let us now apply these remarks to the case in hand.

1. If there is any hope at all that Titius' father or his other friends will administer the necessary correction, then Cajus is not obliged to do so.

2. If there is only slight hope or likelihood that an admonition coming from Cajus will do any good, then there is no obligation to give it.

3. If Cajus is scrupulous or overnervous or inclined to exaggerate, it were better that he abstain from correcting.

4. If Cajus fears harm for himself or for those connected with him, resulting from the correction, as, v. g., enmities, loss of position, breaking of a marriage engagement, then he is not obliged to act.

5. But if Cajus is a prudent man, whose admonitions will likely be heeded, and if he feels convinced that no one else will administer the necessary correction, and if he has nothing to fear from it, except that Titius may feel sore about it, etc., then Cajus is bound in conscience to administer a prudent, earnest, and charitable correc-

tion to Titius, in order to save him from the great evil that is destroying him. Cajus must make it evident to Titius that he is acting, not from motives of fault-finding or recrimination or personal indignation, but in a spirit of true, disinterested Christian charity.

XLIX. A PASTOR'S WATCHFULNESS OVER HIS PEOPLE.

Titius, a parish priest, is assiduous in giving good example to his people, in the administration of the Sacraments, in preaching the gospel; but beyond this his activity does not reach. He does not bother much about the individual members of his parish, seldom admonishes any of them privately, though he knows that some of them are living in sin and giving scandal, knows little about their homes or how they live, beyond what he hears in the confessional or picks up from casual conversations. He admits, of course, that if he did extend his activity a little more beyond the precincts of the parish church, he could accomplish more good; but he claims, at the same time, that he has no strict duty to do so. He contends that when he became a priest, he took on himself the obligation of leading a priestly life and giving good example, of administering the Sacraments and of preaching the gospel to the people, and that with the accomplishment of this all grave obligation ceases. If he were obliged to do more, he claims, the life of a priest would become an intolerable burden. He regrets, at times, that he has not a little more of the "spirit of the saints"; still the "spirit of the saints" is a spirit of heroism, and no man is obliged, "sub gravi," to practise heroism. And thus he argues himself into a feeling of security, "against the evil day." Is Titius' position really secure?

Answer.—Although Titius does his duty with regard to giving good example, administering the Sacraments and preaching the gospel, nevertheless there will continue to be in the parish a certain number of people living in grievous sin, and giving grave scandal, openly or secretly, who are not reached or influenced by Titius'

ministry. There will be some in the parish who seldom or never go to Mass, or to the Sacraments; some who drink to excess; some who live in hatred or dissensions; some who are ruining their children by bad example, by neglect, by indifference; some who are being daily submerged by the temptations and difficulties which surround them.

Now, although it is true that not even heroism on the part of the priest will remove all these sins and scandals, still their number may be greatly reduced in any parish by the timely warnings and admonitions of the pastor, given to individuals in private. And it is a part of a priest's office to do this. If he neglect it, he has reason to fear the approach of almighty God: "If thou dost not speak to warn the wicked man from his way: that wicked man shall die in his iniquity, but I will require his blood at thy hand" (Ezech. xxxiii, 8).

If you ask, at how great sacrifice must a pastor do this, the theologians answer, that although there are cases where a priest is bound to sacrifice *even his life* to save a soul from extreme danger of being damned, or to prevent very grave public scandal (the good shepherd giveth his life for his sheep), nevertheless the occasions are more or less rare that a priest will be obliged, at great sacrifice to himself, to administer private warnings and admonitions to individual parishioners. If he were obliged to do so constantly or frequently, it would render the office of a priest so burdensome that conscientious men would be deterred from assuming it. Thus, for instance, De Lugo: "Neque enim tenetur superior, cum quolibet suo damno, inordinationes impedire: nec ad hoc gravissimum onus intendunt sese obligare, quando hujusmodi munera suscipiunt, sed ad *rationabilem* et *prudentem vigilantiam* et *curam,* quae proportionata debet esse, et major ad majora, et minor ad minus gravia praecavenda" (xiv. 133).

I. The pastor is bound in duty to be vigilant and to make inquiries, otherwise many evils will escape him, or only come to his knowledge when it is too late to remedy them. "Quae potest esse pastoris excusatio, si lupus oves comedit, et pastor nescit," writes St. Gregory. The pastor should know what children attend Catechism, and what children do not. He ought to know who among his parishioners fail to make their Easter duty; what schools the children attend; what books and papers and magazines are to be found in their homes; where the children are employed, especially the girls; whether peace reigns in the family, or whether there be grievous quarreling or hatred and discord, intemperance and blaspheming.

But, some one may ask, ought Titius to make *minute* inquiries into the lives of his parishioners, in order to learn whether they are leading really moral, Christian lives?

We answer, without hesitation, No; he should not. To oblige him to do so would be to make his office an intolerable burden, to torment him with scruples, and to make him detested by his people. The great theologian, Diana, says of this too close scrutiny of the private affairs of parishioners, that it begets scandal and hatred and dissensions. People will not tolerate that their private affairs be scrutinized by others, and such scrutiny, by its very nature, is damaging to the honor and esteem we owe our neighbor, and which all people desire should be shown them (Diana, vii. tr. 4, n. 25).

Hence the theologians lay down the rule that the pastor is obliged, in conscience, to make some inquiries about his parishioners, but only in a general way; except in some very particular case, where he has ample reason to suspect that something is seriously wrong and which he believes he can remedy. In this case he is in duty

bound to make a more minute but always *prudent* and *cautious* inquiry. We say *prudent* and *cautious,* because if prudence and caution are not used, then no good, but a great deal of harm, will be done.

II. The confessional should never be made use of for the purpose of getting information concerning the parish. If it be used for this purpose, then people will come to Confession, not so much to tell their sins in a spirit of true penitence, as to rehearse the gossip and scandal of the parish. And many will refrain altogether from going to Confession, lest they be cross-questioned in this manner, or be thought by others to be scandal-mongers.

III. Even outside of the confessional the pastor should be very slow to listen to any information from others, especially from his own servants or help. The only safe method for him to pursue, if he must ask others, is to ask some good, level-headed, godly man, who may have opportunities for knowing what is going on, and who will not exaggerate or falsify.

IV. But what is the pastor to do if he finds that certain sins are *quite common* in the parish? Should he administer private corrections and warnings to individuals? No; he should not. In such a case he should give the warnings and corrections in the Sunday school, or in his sermons from the altar. Scavini says: "Plerumque impossible est ut omnes singillatim corrigantur, cum nimius sit delinquentium numerus: quo in casu correctio prudenter fiat in catechesibus et publicis concionibus" (I., 452).

V. In what cases, then, should private warnings be given to individuals? It is difficult to say, precisely, in what cases the pastor should admonish individuals privately. By way of suggestion, we would say:

(*a*) In case of public scandal, as when parishioners have gone

to a non-Catholic minister, or civil magistrate, to be married; conducting saloon business in a scandalous manner; young girls frequenting public dance halls, etc.

(*b*) In case of scandal that is not public, if it be of a serious nature, as people living in concubinage, Catholic druggists selling immoral goods, dealers in immoral pictures, books, etc.

(*c*) Where parents are very delinquent with regard to their children, not sending them to Catechism, exposing them to grave dangers without necessity.

(*d*) Where a person has neglected his Easter duty, through carelessness or indifference.

(*e*) In cases of hatred or discord among members of a family.

(*f*) In case of grave detraction, or other sin, committed in the presence of the pastor.

In general, the rule may be laid down, that a pastor is bound to correct in private whenever all other means fail of result, and there is reason to believe that a warning or correction, administered in private, will do good.

VI. As regards the *manner* of admonishing and warning people, in private, of their sins, the following suggestions are gleaned from the best theologians:

(*a*) The pastor's own life ought to be without blame, and he ought to endeavor to make himself loved and esteemed by his people.

(*b*) He ought to pray fervently to God that his warnings may be heeded.

(*c*) He ought to base his admonitions on *natural* as well as supernatural grounds, especially when expostulating with persons who have little or no fear of God.

(*d*) He ought to choose an opportune moment for reproving. Reproofs should not be given in the presence of others, unless it be

necessary, nor in such a way that friends or neighbors may suspect it.

(*e*) The pastor must make it evident to the guilty party that he is acting solely for the temporal and eternal good of the sinner. He must speak earnestly but kindly, not vilifying the parishioner, but rather praising his good qualities, and expressing the confidence that he will not disappoint one's hopes in his regard.

(*f*) Lastly, it may be better in some cases to work through others than to interfere personally. A judicious Catholic layman or woman, of good standing in the parish, may do more good in particular cases than a priest.

With these remarks in mind, and they are gathered from the best sources, from St. Alphonsus, Cardinal De Lugo, Diana, Berardi, etc., the conclusion naturally follows that the position Titius has taken, regarding his duty toward his parishioners, is not fully justified by the teachings of sound theology. It is a great deal what Titius does, but it is not the whole law. To keep a prudent, cautious vigilance over individual parishioners, and to reprove in private, is not to practise heroism. To require of a pastor a constant and minute surveillance over the lives of his parishioners were indeed, as De Lugo admits, to render the office of the priest an intolerable burden, and to deter conscientious men from entering the priesthood; but to require of a pastor a reasonable and prudent watchfulness over the morals of his people is neither contrary to the teachings of sound theology nor opposed to the dictates of sound sense.

L. THE MEDICAL SECRET.

A recent work on "Social Diseases and Marriage" (Prince A. Morrow, M.D.) quotes the following case: "The father of a young woman asks information relative to the health of a young man (your patient) who is engaged to his daughter. 'I wish to ask, under the seal of secrecy, certain details as to his malady. I beg you to say whether I can or can not accept him as a son-in-law. I hope that you will take into consideration the embarrassment of a father placed between the desire to give to his daughter the husband of her choice and the fear of the results the marriage may have, if the hints that have been given me are unfortunately true.' In the case given above should the physician, entrenching himself behind the Hippocratic oath and the proscriptions of the law, guard an absolute silence, or, only interrogating his conscience, should he make it the judge of the secret confided to him, to divulge it, or be silent, according to circumstances?"

Answer.—Secrets committed to professional men, v. g., physicians, lawyers, etc., by reason of their profession are known in theology as *"secreta commissa rigoroso."* They impose an obligation, arising from strict justice, *ex stricta justitia,* and, therefore, in a grave matter they bind under pain of mortal sin. They impose a graver obligation than *"secreta naturalia,"* or *"secreta promissa."* These latter are binding, ordinarily, *"ex fidelitate tantum."* The *"secretum commissum rigorosum"* binds under circumstances where otherwise the secret would have to be revealed, because the good of the public demands that the secret be kept inviolate. And, therefore, even though a judge in a court of law or other superior should lawfully ask for information that would involve the betrayal

of a *"secretum commissum,"* it would not be right to answer, and if there were no other means of guarding the secret, the physician or lawyer, etc., may and must answer by a flat denial of any knowledge of the subject. Of course the laws of civilized countries protect professional men in the keeping of professional secrets. In the work mentioned above the author quotes the opinions of a number of medical men, bearing on the case he cites, which it may be interesting to quote in this connection, as showing the attiude of the medical fraternity toward the duty of a physician to guard under any and all circumstances the *medical secret.* Dr. Langlebert, from whom the above case is cited, indicates the physician's duty in the circumstances as it appears to him as follows: He would answer the young woman's father, who wished to learn from him the condition of health of his prospective son-in-law, thus: "I regret that I can not give the information you ask. The best you can do, if you intend to carry out this project of marriage, is to inform the young man of the warnings you have received, or have him come with you, or send me a writing by which he authorizes me without restriction to say whether he can or can not espouse your daughter." The physician ought to interdict all kinds of information as to the health of a patient on the occasion of marriage; as a professional principle, an invariable rule of conduct, he should take refuge behind the proscriptions of the law. The alternative is cruel. It requires a certain courage in such cases for the physician to remain master of himself and faithful to his duty. If it be a misfortune to society, it would be a much greater damage to permit the enfeeblement of the tutelary principle of the medical secret, which is one of the necessities even of the social order.

Dr. Gaide, commenting on this case, says: "If a client affected with constitutional syphilis, which resists all treatment, does not

fear to solicit the hand of a pure young woman, who is the joy of her family; if the father of this young woman comes to demand of me in confidence, if he can in all security give her to this man, who would soil her by his first contact and leave her as her only consolation children affected by his malady, shall we respond with a silence which may be misunderstood, and thus render ourselves accomplices of a marriage, the fruits of which will be so deplorable? Never would I have the courage to obey the law under such circumstances. My conscience would speak higher than it, and without hesitation I would say, 'No, do not give your daughter to this man,' and I would not add another word."

Juhel Renoy maintains that it is not only lawful, but even compulsory for any doctor who is a man of honor and courage, to oppose and even denounce any criminal projects his patients might entertain in regard to marriage. He cites two instances in which he had undertaken the cause of young girls who were about to fall into a trap of this kind, and as his patients were without conscience, he refused to listen to the moral reason he adduced, he declared that he did not feel bound to secrecy toward them any longer, and that he would either go or send to the parents of the young women and warn them. Under this threat one of these marriages was broken off, but a more direct interference was required in the other case. He sent for the girl's father by one of his confrères, and replied without hesitation to the question put to him, "No, sir, do not marry your daughter to Mr. X," with so much emphasis that the marriage was broken off.

Commenting on this action of Renoy, Dr. Jullien says: "If the result was fortunate, the method employed was detestable. It was treason, perpetrated with the best intentions, but still treason, for it is all very well to say the patients were warned, but it was not until

they were no longer masters of their secret, which would no doubt not have been revealed if they had known what use there was to be made of it. Strict duty would have required that before receiving this confidence our confrère should have warned the parties interested, that he would publish the information if he saw fit."

Dr. Morrow, from whose excellent work these extracts have been made, expresses his own opinion on this subject in the following words: "While the obligation of the medical secret is in the general interest of the social order, and should be maintained as a fixed principle of professional conduct, it may be admitted that a situation of a peculiarly aggravating character may present itself when the patient shows himself an exceptional sort of brute by the obstinacy with which he adheres to his criminal purposes after he is assured that he will almost certainly infect his wife—in such a case the physician, knowing all the circumstances and fully appreciating the tragic significance of such a step, must be guided by his own lights and conscience. If he should consider the criminal intent of this monster as entirely without the pale of professional protection, and refuse to stifle his own feelings as a man of heart and conscience, who shall condemn him? Such a man is far more likely to prove loyal to the highest ideals of ethical duty in his relations with his patients in general than the man who views these social catastrophes with a cold-blooded indifference, disclaiming all personal responsibility, and considers that in guarding the dissolute secret of his patient he is doing his whole professional duty."

It is clear from these extracts, and from the opinions of many other medical men which might be quoted, that the medical fraternity is not at all united as to the ethics of revealing the medical secret, even in an extreme case, like the one we give. The subject indeed is fraught with much difficulty. Those who hold that it is never

allowed to betray the medical secret, not even to prevent the commission of a crime, maintain that the social welfare would suffer more, eventually, by the revelation of the secret than by its keeping. For the very ones who have most need of confiding in a physician are the very ones who would be most deterred from such confidence, by the knowledge that the physician might under certain circumstances lawfully betray their secret. And it was in this conviction, they say, that the laws of many countries make it a crime for the physician to reveal his patient's secret for any purpose whatsoever, even to protect the innocent or to prevent the commission of a crime. Thus the French Penal Code, art. 378, decrees that "physicians, surgeons and other officers of health, also pharmacists, midwives and all other persons, the depositaries, by their state or profession, of secrets which have been confided to them, outside of cases where the law obliges them to denounce, who shall reveal their secrets shall be punished with imprisonment from one to six months, and by a fine of from one hundred to five hundred francs." And recently in England, the House of Lords sustained the decree of the lower court, punishing an eminent physician by an enormous fine for having revealed to the wife, to protect her from contamination, the medical secret of her husband, who was one of his patients.

A German court, on the other hand, decided in 1903 that the obligation to secrecy on part of the physician ceases when a higher moral obligation urges him to divulge the truth. In the instance of husband and wife the court considers the physician as permitted, and even in duty bound, even against the expressed will of the sick partner, to apprise the other of a danger of infection. The court adds that such higher moral obligation may well be present also in instances other than between husband and wife.

In the case before us it must always be kept in mind that the patient, who has committed his secret to the physician, is going to commit a crime, a moral, if not a legal crime, most odious in its nature and most far-reaching and destructive in its effects. The physician is the only one who can prevent the commission of the crime, because he alone knows the secret. All his pleading, all his admonitions, all his denunciations to the patient in private are of no avail. The crime will be committed, unless the physician breaks his professional silence and reveals the secret of his patient. Does *strict justice* toward the patient oblige the doctor to secrecy under these circumstances? Does the welfare of the social order demand that even in this extreme case the secret of the criminal shall be guarded inviolate, though he is about to perpetrate a great wrong? The theologians are unanimous that in a case like this neither justice toward the patient nor the interests of the social order require of a physician that he keep inviolate the secret of a patient who is determined to commit a crime, the cause of which crime or the incentive to it is contained in the secret.

This is the doctrine of St. Alphonsus (de oct. praec. 971): "Potest manifestari secretum commissum ex justa causa, nempe si servare secretum verteret in damnum commune, vel alterius innocentis, seu etiam ipsius committentis, quia tunc ordo charitatis postulat ut reveletur."

Salmanticenses (tr. xiii., de restitut. cap. 4, n. 82): "Similiter secretum etiam commissum revelandum est, quoties ejus observatio vergit in damnum commune, vel alicujus innocentis, quia secretum non potest obligare contra caritate malteri debitam, sed ex caritate debemus cavere damna communitatis et innocentis."

Lugo (de Just. et J. disp. 14, n. 142): "Secretum etiam commissum non habet locum in iis casibus, in quibus ipse qui secretum

commisit, injuste vexat rempublicam vel alium innocentem, nec vult ab injuria desistere: tunc enim quantum opus fuerit ad injuriam avertendam, poteris secretum commissum revelare, etiamsi promisisses et obligasses te ad sustinendam mortem, et quaelibet mala pro custodia secreti: hoc enim non tollit, quod possit postea vis vi repellere."

This is the doctrine also of modern moralists, v. g., Lehmkuhl, Konings, Genicot, Noldin, etc., as will appear from a consultation of their treatises on the eighth commandment. It can scarcely be maintained with any good show of reason that the interests of society demand that a criminal be shielded, while committing a crime, by guarding his secret. It will not interfere with the free and confidential relations between physician and patient if it is understood by the patient that his secret may be revealed if such revelation be necessary to prevent him committing a crime. The physician's duty toward society and toward an innocent third party outweighs and ought to outweigh his duty toward a patient contemplating a crime against the community at large or an innocent private citizen. It would make for immorality to close the mouth of a physician in such circumstances. Of course, the physician must endeavor by every other legitimate means in his power to dissuade the patient from committing the crime before it becomes lawful for him to have recourse to the extreme measure of revealing his secret. But it can be no part of the contract entered into by patient and physician, that the physician shall be silent when his silence becomes immoral, as it does when it aids and abets the commission of crime.

To this line of reasoning it may be objected that it calls into question the morality of the laws of many civilized nations, prohibiting the revelation of the medical secret even in as extreme a

case as the one under discussion. To this we answer in the words of the author quoted above:

"It is worthy of note that in Europe there is manifest a growing dissatisfaction upon the part of many medical men, amounting in some instances to an active protest, against the intangibility of the medical secret, especially its inflexible application in cases where the question of marriage is concerned. As indicating the drift of professional sentiment in this direction, in the discussion upon the 'Sanitary Guarantees of Marriage,' before the Société Française de Prophylaxie Sanitaire et Morale, July, 1903, many authoritative voices were raised against the dogma of the professional secret in the matter of marriage. M. Forin demanded 'that the law authorize the physician to no longer respect the professional secret, when it comes to a project of marriage.' In the opinion of M. Crequy 'the medical secret ought to have exceptions which in the superior interest of the race, should also apply to venereal maladies.' MM. Cruet and Valentino presented essays demanding the relaxation of the medical secret in cases where the interests of the individual protected were opposed to the general interests. M. Valentino declares that professional secrecy is the most powerful obstacle to all real hygienic progress, as by keeping concealed all morbid conditions, it impedes the efforts of the social forces against the spread of disease, renders ineffective the law for the compulsory notification of infectious diseases, and prevents the sanitary protection of marriage."

It is hardly necessary to remark that the physician is bound toward the innocent third party only "ex caritate." Toward his patients he is bound "ex justitia"; toward others "ex caritate." Now charity does not bind "cum tanto incommodo." Consequently wherever the physician would incur serious risk, as legal prosecu-

tion, or loss of practice, etc., he is not obliged to protect an innocent third party from injury, by revealing the medical secret.

N. B.—What is said here about the medical secret, applies to all secrets committed to priests outside of Confession, to lawyers, midwives, nurses, druggists, dentists, in short, all professional men who by reason of their profession are made the guardians of the secrets of others.

LI. RESPONSIBILITY FOR MASS STIPENDS.

Mr. M. on his deathbed left Father Joseph $500 to say Masses for the repose of his soul. Half of this sum Father Joseph gave to another priest, a personal friend and a man in every respect above reproach, who, he knew, would say the Masses without fail. The two hundred and fifty Masses that Father Joseph kept himself he found it impossible to say within a year from the time he received them owing to the large number of nuptial and funeral Masses he was obliged to say. At the end of the year Father Joseph has still one hundred Masses to say for the repose of the soul of Mr. M. Father Joseph's particular friend, the priest, to whom he gave the other two hundred and fifty Masses to say, allowed himself to be persuaded to invest all the money he had, including this sum of $250 for Masses for the soul of Mr. M., in some real estate transaction and lost it all. He was taken sick a few months afterward and died, leaving no money and making no provision for the saying of the two hundred and fifty Masses given him by Father Joseph.

Father Joseph has heard something about a special decree regarding Mass stipends, issued last year by the Holy Father Pius X., and which imposes graver obligations in this matter than was formerly imposed by the moralists. He is much worried as to whether this new decree affects his case, and to what extent. And he would like to know what is his duty in regard to these Mass stipends which he received from Mr. M.

Father Joseph's query resolves itself into two points:

1. What must he do with the hundred Masses which he himself has left over at the end of one year from the time of receiving them? May he continue saying them, since it was not his fault that they are still unsaid?

2. Is Father Joseph responsible for the two hundred and fifty Masses which he gave to his friend, together with the stipends? "Videat ipse," he thinks, with regard to his friend. When he handed over the Masses, together with the stipends, to a responsible priest, he acted prudently and reasonably, and he does not see why he should still be held responsible. He has read in many a volume of "Casus Conscientiae," that if a hundred Mass stipends were stolen from a priest through no fault of his, before the Masses were said, the priest would not be bound to say them, because it would be *unreasonable* on the part of the donor to require this of him. In accepting the stipends for the Masses, either for himself or for others to say, he did not intend to be responsible for the money under all circumstances, but only to a reasonable and just extent.

Answer.—On May 11, 1904, Pope Pius X issued a special decree concerning "Missae manuales," to be binding on all priests throughout the world. These "Missae manuales" are the Masses that a priest receives, from day to day, from the faithful, to say for one intention or another, and for which he receives a stipend. "Who must say these Masses?" "When must they be said?" "To whom may they be given, in case the original recipient can not say them?" "In what sense is the original recipient still responsible for them, in case the priest to whom he gave them does not say them?" These are some of the questions which the Holy Father's instruction answers.

It may be well, therefore, before discussing Father Joseph's case, to give the several articles of the Pope's decree which refer to the matter in hand. The decree emanates from the Sacred Congregation of the Council, and is dated May 11, 1904. It is entitled: "Decretum de observandis et evitandis in Missarum manualium satisfactione."

Manual Masses, according to the decree, are all Masses that the faithful, from day to day, request a priest to say, at the same time offering him a stipend for the Mass, whether the stipend be given out of hand (brevi manu) or be provided for in the last will, or the estate be burdened with the obligation of having a certain number of Masses said from year to year, in perpetuum, provided only they may be said in any church, by any priest, as the head of the family may elect.

1. No priest may ask for or accept Mass stipends unless he is morally certain that he *himself* will be able to say the Masses within the time hereinafter fixed for acquitting that obligation; he must say such Masses personally, except he be a bishop ruling a diocese, or a prelate of a religious order having jurisdiction; if he be a bishop or a prelate the Masses may be said by the priests subject to such jurisdiction.

2. The ordinary time limit for saying a Mass for which a stipend has been accepted is *one month;* six months for one hundred Masses, and in similar proportion for larger numbers.

3. No priest is allowed to accept a larger number of stipends than he himself can probably satisfy within one year from the time of accepting them, unless with the explicit consent of the person offering the stipend.

4. After the lapse of a year from the date that the stipends were received, if through unforeseen circumstances there remain a considerable number of Masses unsaid, the obligation is to be placed in the hands of the bishop, together with the honorarium, unless it is clear that the delay is at least *not contrary* to the intention of the original donor of the Masses. In this matter the Holy Father burdens, *"sub gravi,"* the consciences of those who are responsible for the Masses.

5. Those to whom a number of stipends has been committed, with the understanding that they may be given to other priests to say, may give them to any priests they have a mind to, provided they are certain, from personal knowledge, that these priests can and will say the Masses.

6. Those who have given the surplus stipends, for which they have been unable to say the Masses, to their Ordinary, may consider themselves free from all further obligation before God and the Church. But whoever commits the stipends received by him to other priests is responsible for them before God and the Church until he knows for certain *that the Masses have been actually said;* and if, through the loss or the miscarriage of the money, or through the death of the priest, or through any other accident, there remain any reasonable doubt as to whether the Masses were said, the original recipient of the Masses is bound in conscience to say them or to have them said.

These are the articles of the decree that bear upon the case of Father Joseph.

It will be seen at once that they render the doctrine regarding Mass stipends much more stringent than the commonly accepted teaching of the moralists.

The Code embodies most of the provisions of the decree of May 11, 1904, but it modifies No. 6 of that decree in favor of the priest who transfers Mass stipends to another priest whom he knew to be entirely trustworthy. The priest who transfers the stipends is freed from responsibility for the Masses as soon as he knows that the other priest has accepted the obligation to say the Masses and has received the stipends therefor, as is stated in Canon 839. The former opinion of some theologians that one is not responsible for the Masses if the stipends are stolen from the priest or are lost

in any other manner without his fault is no longer tenable, for the Code of Canon 829 rules that *the priest who has received the stipends for Masses is not relieved from the obligation of saying the Masses, or having them said, if the stipends are lost, even without fault on his part.*

Without going into further details concerning the decree, we will say briefly that in the light of it:

1. Father Joseph is bound, under pain of mortal sin, to hand over the one hundred Masses, together with the stipends which he has still left after one year from receiving them, to his bishop, who will take care of them. And having handed them over to the bishop, Father Joseph is in no wise responsible for them any longer.

2. Under the law of the Code Father Joseph is not responsible for the Masses which he transferred to the other priest provided he acted like a prudent man. If he knew that his friend was inclined to risky speculations with his money to an extent of investing the last dollar in foolish ventures, he had no right to entrust such an obligation to him, and in default of the priest he is held to say the Masses or have them said. If he had no reason to suspect his friend, Father Joseph is not responsible for the Masses transferred to his friend.

LII. A SON'S DUTY TOWARD HIS FATHER.

A young man, whom we will call Robert, accuses himself in Confession of having borne a great dislike and even hatred toward his father for many years. His father, he says, was a drunkard, and filled their home with shame and sorrow. He abused the mother and the children, cursed them, drove them from the house by his violence, and even threatened their lives. When Robert was seventeen years of age he left home, against the will of his father, and came to New York to make his way in the world by learning a trade. His father wanted him to remain at home and to go to work for a daily wage, which the father hoped to be able to spend for drink. After Robert had been in New York for a number of years the father died, having wasted in drink everything he possessed, and leaving a good many drink bills unsettled in different taverns. Robert, who in the meantime had prospered greatly and had considerable money in the bank, buried his father as cheaply as possible; in fact, so cheaply that it caused considerable unfavorable talk among the townspeople. Nor did Robert ever afterward have even one Mass said for the repose of his father's soul, or ever offer a penny toward the payment of his father's debts. What judgment is the confessor to form of Robert's conduct?

Solution.—It is necessary to separate the different counts in Robert's accusation in order to form a clear estimate of the sinfulness or lawfulness of Robert's conduct. There are *four* separate counts in the accusation, namely:

(1) Robert accuses himself of harboring *hatred* toward his father; (2) of having left home against the will of his father; (3) of having shown disrespect toward his father in the matter of the funeral arrangements, and ingratitude in not having Masses said for his

soul; (4) and, finally, of injustice toward others in not settling his father's debts.

Let us take up each one of these four counts of Robert's accusation, and see whether and in how far Robert may have sinned.

1. Robert accuses himself of cherishing a great *dislike* and even *hatred* toward his father. Is this *odium inimicitiae,* or is it *odium abominationis? Odium inimicitiae* is sinful; *odium abominationis* need not necessarily be sinful. *Odium inimicitiae* is the hatred we conceive for some one personally, not merely for the evil that is in him or the wrong that he does, but for himself personally, inclusive of the good there may be in him, and we wish him evil, precisely because it is injury to him. *Odium abominationis* is something quite different from this. It is the strong aversion we feel for some one not personally, but for his vices and excesses. Thus, we hate, or rather abominate, the drunkard, not because of his individual personality, but because of his drunkenness. We hate his drunkenness, and we shun him, not because of himself, but because of his drunkenness. This *odium abominationis* may be a venial sin sometimes, but it is not a mortal sin.

Now, as regards Robert's *hatred* for his father, we are inclined to think that it was *odium abominationis,* and, under the circumstances, that it was not a sin. If Robert ordinarily showed his father the respect due to him, and obeyed him in reasonable things, then the hatred that Robert feels for his father is nothing more than a just loathing and disgust for his father's excesses. He despises and abominates his father's "weak, sick way of vomiting up his existence"; and in this he would seem to be without sin. Of course, there is always present a danger that this *odium abominationis* may go over into *odium inimicitiae,* and become mortally sinful, and Robert must be put on his guard against such a contingency.

2. Robert accuses himself of disobedience against his father in leaving home against his father's wishes. It does not appear that Robert sinned in this. Robert's motive in leaving home was just and honorable; namely, to render his existence useful by learning a trade. His father's motive in keeping him at home—namely, that he might have the benefit of his wages for drink—was unreasonable and sinful. No good reason can be advanced why Robert ought to obey his father, when such obedience would entail lifelong detriment to Robert's best interests. Of course, Robert is bound to see to it that his father does not want for food or clothing; but when the father has wherewith to buy food and clothing, but spends it for drink, there is no obligation for Robert to supply him with food and clothing.

3. The third count in Robert's accusation regards his father's funeral, and having Masses said for his soul. In this we think that Robert sinned. That Robert, who had plenty of money, had his father buried in such a niggardly and miserly way, showed a lack of elementary respect for his father, and was really insulting to his father's memory and savored of revenge. Robert was bound to observe the "decencies" of society in burying his father, for these decencies are founded on the reasonable respect and honor which the conscience and feelings of men decree should be shown to others. There was no obligation for Robert to provide a funeral for his father in keeping with his means; but there certainly was an obligation to give his father decent and honorable Christian burial.

Robert commits a mortal sin also in not having Masses said for the repose of his father's soul. His father is, in all likelihood, in grave spiritual need. Robert has plenty of means at his disposal to succor his father without grave inconvenience to himself. Not to do so is to transgress the law of Christ. For all theologians are

agreed that for a child, who has the means, to refuse to have any Masses said for the repose of his parent's soul would be the committing of even a mortal sin (St. Thom. 2 Q. q. 101, a. 2; Ball. P. n. 7; Genicot i. 346, ii., etc.).

4. Finally, as regards the fourth count, there is no obligation for Robert to settle any of his father's drink bills, since he has received no inheritance from his father. "Liberi tenentur solvere debita parentum, tantum ratione honorum acceptorum" (S. Alph. n. 333).

LIII. APPROPRIATING ANOTHER'S IDEAS.

The following case has been submitted to us for a solution: Mr. C., a draughtsman, is told by his employer to try to remember and make a sketch (that is, to steal the idea) of a drawing which was being submitted for sale by another draughtsman. Would it be wrong for Mr. C. to do so?

Solution.—All theologians are agreed that an author or writer or architect or draughtsman has a strict right to the fruits of his genius. And this right of ownership in the fruits of one's intellectual labor is founded in the law of nature. For if it be a law of nature that men should have an exclusive right to the fruits of the labor of their hands, with much more reason ought they to have an exclusive right to the fruits of the labor of their brains. And if the good of civilized society requires that a man be secured by law in the peaceful possession of whatever property he has acquired by his industry, with much more reason must we hold that the good of civilized society requires that men be secured by law in the peaceful possession of that higher and more valuable kind of property, namely, the results of intellectual and artistic talent. There is nothing that is more intimate to a man—or, to speak more properly, there is no kind of property so intimately and closely connected with a man—as the fruits of his own genius. For these are the fruits of the creation of his own mind, and had no existence before he brought them into being; and therefore the fruits of his intellectual industry belong to him and are part of his being in a way that no other kind of goods and chattels can be said to be. Consequently, it has always been maintained by theologians and jurists alike that an author or inventor or painter, or any other intellectual worker, is entitled to ex-

clusive ownership in the results of his intellectual labor as long as he does not hand over his rights to the public, or part with them by sale or free gift to another. And this strict right of an author or inventor or other intellectual worker to the fruits of his genius imposes a grievous obligation on all other persons to respect this right, and to avoid all invasion of it. It is not allowed to steal another's ideas, any more than it is allowed to steal his lands, and any such theft must be made good by adequate restitution.

"Jamvero omnes concedunt quemlibet hominem plenum dominium habere in frustus ingenii sui quamdiu ea publici juris non fecerit; nihil enim magis proprium nobis esse potest quam quod proprio mentis labore acquirimus. Et sane si res *externae* domino fructificant, a fortiori facultates *internae*, quae ab essentia nostra immediate dimanant. Qui igitur manuscripta vel inventa alterius surriperet, ac vulgaret, absque auctoris licentia, contra justitiam peccaret, et ad damna rescarcienda teneretur; siquidem violat duplex jus quod auctori competit, ne, ipso invito, edatur opus ab eo scriptum, et ne minuatur lucrum ex eo percipiendum" (Tanquerey, III., 39).

Judge Kent (American Law, Vol. II., n. 365) says:

"Another instance of property acquired by one's own act and power is that of literary property, consisting of maps, charts, writings and books; and of mechanical inventions, consisting of useful machines or discoveries produced by the joint result of intellectual and manual labor. As long as these are kept within the possession of the author, he has the same right to the exclusive enjoyment of them as of any other species of personal property; for they have proprietary marks, and are a distinguishable subject of property. But when they are circulated abroad and published with the author's consent, they become common property, and subject to the free use of the community."

Mr. C, therefore, is not allowed, in conscience, to use the ideas of his fellow-draughtsman in the interest of his employer. His fellow-draughtsman, by offering his designs for sale, does not relinquish his right to them. For another to steal them or to use them against their rightful owner's and creator's will is to transgress the seventh commandment, and full pecuniary restitution must be made to the original designer or draughtsmen for any loss he may have suffered before the sin can be forgiven.

LIV. HOW SMALL THEFTS BECOME GRAVE.*

Father James finds that several penitents have been growing rich through the practice of taking small sums from the same man or corporation, and from various individuals. He desires to know when he is to impose the obligation of restitution.

Answer.—How do small thefts become grave? Successive small thefts can become grave in three ways:

1. By intention. The thief intends to steal $5.00 altogether, but takes only a dollar at a time. In this case the interval between the successive acts makes no difference; for by intending to reach a definite grave sum he does serious injury to his neighbor. More probably, however, he does not commit a mortal sin each time, for the separate acts are virtually included in the general purpose of reaching a grave amount. If he steals from one individual the relatively grave amount, *i. e.*, a man's daily wage, this would be a grave sin. If he steals from various individuals, the absolutely grave amount is required to make a mortal sin. This presupposes that each individual suffered only a slight loss.

Here, we may note that Tanquerey, in the 1904 edition of his Moral, considered $7.00 or $8.00 to be absolutely grave matter. In the 1919 edition the estimate remains unchanged. In Sabetti-Barrett, $35.00 is the sum proposed. In this intricate matter there is much diversity of view. The harm done to a very rich man or a corporation may be slight in itself, but theologians consider the

*By P. J. Lydon, D.D.

serious social effects if such thefts were not forbidden *sub gravi.* The stealing, therefore, of a considerable sum of money, apart from its effects on the individuals who are its victims, is prohibited by natural justice. What this "considerable sum" is at any time and place is our difficulty. Father Slater, in 1915, set down $5.00 or 20 shillings. Probably we should not be rash in saying, *omnibus pensatis,* that at present in the United States $20.00 constitutes absolutely grave matter *in materia furti.* (See also pp. 204-205 *supra.*)

2. By conspiracy. Several, by mutual agreement, steal simultaneously or successively small sums from the same individual or from different persons. When the sum of the small thefts reaches *materia gravis* each thief sins mortally; for by conspiring each wills a grave injury to his neighbor. If the thefts are from one individual the relatively grave amount suffices for grave matter; if from various persons, the absolutely grave amount is necessary. Of course, if several steal small sums from another but each works independently, none of them sins mortally, because each inflicts only a slight injury and does not intend the harm that is done by the others.

3. By multiplication. In this case there is no previous intention of reaching any definite sum, but the thief takes small sums from the same or different persons as occasion offers. In order that these small thefts may coalesce into a grave sin of theft it is required that he keep the sums already taken and that no considerable interval elapse between the separate acts. What interval is necessary to prevent the separate thefts from becoming grave? Theologians generally agree that if the sum taken each time is a considerable percentage of a grave amount, say half of a man's daily wage, an interval of two months would suffice to keep the separate thefts

venial; if the amount taken each time is much less than *materia gravis,* one month or less between each act would prevent coalescence. A person does not feel the loss so much when there is an interval between each act of stealing, and hence theologians require more for *materia gravis* here than they do where a grave amount is taken at one and the same time. For example, if a man's daily wage be $4.00, a mortal sin of theft is committed when it is taken at once, but if the small thefts occur at intervals of a few weeks (but less than every two months), theologians add one-half to the ordinary amount in order to constitute a mortal sin. In this case $6.00 is *materia gravis.* If the small thefts be from various individuals the absolutely grave amount is necessary. The same is to be said of stealing from corporations; *e. g.,* railroads, etc.

Storekeepers who have cheated their patrons by false weights and measures can make restitution by increasing the weights and measures in the future. If the injured individual cannot be found the money unjustly gained must be given in charity.

LV. GODPARENTS IN BAPTISM.

A parish priest, whom we will call Father William, had occasion to baptize the child of two strangers, who were spending a few weeks in his parish, during the last summer. Being strangers, they did not know any one whom they might ask to act as sponsors for their child, and therefore brought the child to the church to be baptized, without any godparent. The priest had just finished Mass, and having two altar-boys present, he made them stand for the child. The child was a girl baby. After the ceremony was completed, Father William began to think that perhaps he should have allowed only *one* of the altar-boys to stand for the baby, and that as there were some nuns in the church at the time, he would have been more within the law, had he called one of the nuns to act as godmother to the child. In looking the matter up afterward, he discovered, what was news to him, that unless the sponsors touched the child *physically* while it was being baptized, they contracted no relationship to the child, and as he never required godfathers to touch the child, physically, when he baptized, he concluded that he had baptized this child without its having any sponsors, and therefore did not enter the altar-boys' names in the Baptismal records, as sponsors. He now refers the following questions to the HOMILETIC MONTHLY for a solution:

1. May two persons of the same sex stand for a child?

2. May nuns stand for a child?

3. Is it required that sponsors touch the child *physically,* while it is being baptized, in order to contract spiritual relationship?

4. In the case of converts from the Episcopal church, may two godfathers be allowed to stand for a male child, or two godmothers for a female child, or may the parents themselves ever be permitted to stand for their own child?

5. Finally, in a very special case, may a Catholic stand sponsor for a non-Catholic child, baptized by a non-Catholic minister of the Gospel?

Answer.—The custom of having certain persons act as sponsors or godparents in Baptism, goes back to the earliest ages of the Church. Reference is found made to them by the Fathers and early writers such as St. Augustine, St. Basil, Tertullian, etc. The law at present in the Church regarding godparents dates from the Council of Trent, and it is that law that must guide us in this matter of godparents.

According to the Council of Trent (S. 24) at least *one* godparent, either male or female, and not *more* than *two,* must stand for a child in solemn Baptism, under pain of mortal sin. But it is not allowed to admit two male sponsors or two female sponsors to stand for the same child, neither is it permitted to the parents of the child to act as sponsors for it. The words of the Council of Trent are:

"Sancta Synodus statuit, ut unus tantum sive vir, sive mulier, juxta sacrorum canonum statuta, vel ad summum unus et una baptizatum de Baptismo suscipiant, inter quos, et baptizatum ipsum, et illius patrem et matrem, nec non inter baptizantem et baptizatum, baptizatique patrem ac matrem tantum spiritualis cognatio contrahatur" (Sess. 24, cap. 2).

And the words of the Roman Ritual are: *Patrinus unus tantum, sive vir sive mulier, vel ad summum unus et una adhibeantur, ex decreto Con. Trid.; sed simul non admittantur duo viri, aut duae mulieres, neque baptizandi pater aut mater* (de Patrinis, n. 23).

Therefore according to the Council of Trent only one, or at most two, a male and a female should be admitted to act as sponsors, and according to the opinion of St. Alphonsus Liguori, the pastor would be guilty of mortal sin, if he admitted a greater number. When

there are two sponsors, they should be of different sexes, not two males, nor two females. St. Alphonsus goes so far as to affirm that it would be a mortal sin to admit two males or two females, if they be of a *different* sex from that of the child, that is, two male sponsors for a female child, or two female sponsors for a male child; but the holy doctor holds that to admit two sponsors of the same sex, and of the same sex as the child, would be only a venial sin (Lib. vi., n. 155).

Godparents may not be more than two in number, in order that the spiritual relationship arising from Baptism, may not be multiplied. And it is for this same reason that St. Liguori believes it to be a grievous sin to allow, v. g., two godfathers to stand for a girl, because spiritual relationship is thereby needlessly extended, and diriment impediments to marriage multiplied without cause. In private Baptism, that is, where the ceremonies of the Sacrament are omitted, there is no obligation to have any godparents.

2. The second question proposed to us is this: May nuns act as godmothers?

The Roman Ritual, de Bapt., n. 26,, says: *Praeterea ad hoc (munus patrini) etiam admitti non debent Monachi, vel Sanctimoniales, neque alii cujusvis Ordinis Regulares a saeculo segregati.* This was generally interpreted to mean religious orders in which solemn vows are taken. The Code in Canon 766 makes it illicit for novices and professed members of any religious organization to act as sponsor, except when necessity urges and express permission of at least the local superior is had.

3. To the third question we answer, that it is necessary to touch the child *physically,* while it is being baptized, in order to contract the spiritual relationship. *Ut in ipso Baptismo, per se vel per procuratorem* PHYSICE TENEAT *aut* TANGAT *infantem, dum baptizatur,*

aut statim levet aut suscipiat de sacro fonte, aut de manibus baptizantis (St. Lig. Lib. vi., n. 146). It is not necessary that the godparent touch the child's body immediately, that is, the child's flesh, but it suffices if the godparent touch the child's clothes. Mere witnessing the Baptism, or mere assistance at it, even though one have the intention of acting as godparent, is not sufficient to contract spiritual relationship. As Baptism is a new birth, the godparents must not merely witness it, but they must take part in it. In case of a subsequent marriage between the godparent and godchild, if there were doubt as to whether the godparent physically touched the child in Baptism, a dispensation would be necessary *super impedimento cognationis spiritualis, ad cautelam.*

4. In the Book of Common Prayer of the Protestant Episcopal Church of the United States, there is this article: "There shall be for every male child to be baptized, when they can be had, *two* godfathers and one godmother; and for every female, one godfather and two godmothers; and parents shall be admitted as sponsors, when it is desired."

If more than two godparents, namely, one man and one woman, be designated by the parents of the child to stand for the child, whether they be Catholics or non-Catholics, they must be prevented by the priest, from standing. If they are Catholics, this will be very simple as a rule. If they be non-Catholics, it may be practically impossible to prevent them from acting as sponsors, without serious inconvenience. In this case they may be allowed to witness the ceremony, without having them touch the child physically, when it is being baptized. If you can not, without giving offense, keep them from touching the child or holding it, while it is being baptized, you may allow them even this privilege; but in no case are they to be considered the sponsors of the child. The law forbidding more

than one male and one female sponsor, and the law forbidding non-Catholics to act as sponsors, are church-laws and do not oblige *cum gravi incommodo.*

This is the general opinion of modern theologians. *Quodsi hereticus a parentibus jam designatus, absque magna offensione removeri non posset, admitti posset tamquam testis, quin admoneretur de tangendo infante in actu ablutionis. Quin etiam si absque gravi malo impediri non possit, quominus infantem tangat, ad evitandum tantum malum, hereticus admitti posset, cum res non sit intrinsecus mala* (Noldin, III., n. 79; Lehmkuhl, Casus consc. II., n. 84).

It is laid down in the Code, Canon 765, that a father or mother cannot act validly as godparent for their child, nor can one spouse for the other.

5. It is never allowed that a Catholic stand for a non-Catholic child, in a non-Catholic Baptism. The Holy Office has expressly forbidden it by decree of May 10, 1770.

Some theologians, with St. Alphonsus, thought that a Catholic might act as sponsor in a non-Catholic Baptism, when such action on the part of the Catholic could in no manner be looked upon as an approval of a non-Catholic rite. They thought that there was always present some hope of bringing the child up in the faith, and that this was a sufficient justification for taking part in a non-Catholic ceremony. But, apart from the prohibition of participating in non-Catholic rites, it is never allowed to ask what another can not grant without sin; but the godparent asks of the non-Catholic minister, what the minister can not confer without sin, namely, Baptism (Lehmkuhl, II., 71).

LVI. RIGHT OF A BISHOP TO SUSPEND A PRIEST WITHOUT TRIAL.

Titius, a priest, exercising the functions of the sacred ministry in a certain diocese, is "reported" to his bishop for indulging too freely in intoxicating drink—in fact, for being well under its influence on several occasions. Without being granted the benefit of a canonical trial, or even a thorough investigation of the charges preferred against him, the accused Titius is suspended by his bishop and ordered to repair to a monastery and remain there till he (the bishop) sees fit to recall him. Under protest Titius submits, complies with the bishop's command, and spends a considerable time in a monastery, where he is obliged to defray his own expenses.

Now it is asked:

1. Had the bishop a right to suspend Titius without a previous canonical trial or thorough investigation of the charges brought against him?

2. Had the bishop a right to order Titius to a monastery without previous trial or canonical procedure?

3. Had the bishop a right to compel Titius to defray his own expenses while in the monastery?

Solution.—1. Had the bishop a right to suspend Titius without canonical trial or other legal formality?

Prior to the Council of Trent no ecclesiastic could be punished by his bishop, v. g., suspended from the exercise of his orders, except upon a regular or formal criminal trial as prescribed by the sacred canons. This was the general law of the Catholic Church up to the time of the Council of Trent, and admitted of no exception whatever, save only in the case of murder, heresy, and in the case of

regulars, who for secret crimes might be restrained by their superiors from receiving higher orders even without trial. Stremler (Eccl. Punish. p. 310) says: Before the Council of Trent, a bishop could not restrain any unworthy candidate from holy orders, nor punish a delinquent ecclesiastic, except upon a *formal* or an ordinary criminal trial, as established by the law of the Church and contained in the decretals. No crime could be punished, except when the delinquent had been judicially convicted, in a canonical trial conducted with the formalities established by canon law for proceedings in criminal causes."

The Council of Trent, in its 14th session, chapter I, de Reform., introduced in this respect, a complete and radical change in the existing discipline of the Church. For in its 14th session the Council enacted that in certain cases bishops could inflict punishment upon their delinquent ecclesiastics without previous trial or judicial formality of any kind whatever. By virtue of this power the bishops may in certain cases condemn an ecclesiastic, without giving him an opportunity to defend himself, *ex causis nullo judicio probatis, sed in sua (episcopi) conscientia perpensis. . . . Ad hanc suspensionem imponendam nec formae judiciales, nec canonicae admonitiones requiruntur* (Instr. Congr. de Prop. Fide, 1884). This power of the bishop to suspend his priest without canonical trial or legal procedure, but simply for reasons known to him extrajudicially, and sufficient for his own conscience, is known in Canon Law as the power to suspend a priest, or other cleric in major orders, *ex informata conscientia.* It was conferred on the bishops by the Council of Trent, to safeguard the dignity of the priesthood as well as the spiritual interests of the faithful, and to eradicate evils that could not be reached in any other way.

The bishop is not required to give any reasons to the priest whom

he suspends, but he is required to give reasons to Rome, if appeal is taken to Rome. There lies no appeal from the suspension *ex informata conscientia.* That is, if the suspended priest takes an appeal to Rome, he does not thereby cause a suspension of the censure until a final decision is given by Rome. The only recourse for a priest in these circumstances is to observe the articles of his suspension, and appeal extrajudicially to the Holy See. *A decreto suspensionis ex informata conscientia non datur appellatio, sed semper patet recursus extrajudicialis ad S. Sedem, suspensione interim in vigore permanente* (Instr. Congr. de Prop. Fide, n. v. 11 and 12).

There may exist among some persons a persuasion that this power of the bishops to suspend ecclesiastics without due process of law, or *ex informata conscientia,* was somehow abrogated for the United States by the III. Pl. Council of Baltimore. Such persuasion is altogether unfounded. The power of a bishop to suspend his priest *ex informata conscientia,* in the United States, is reaffirmed by the Council of Baltimore and by the instruction issued by the S. C. de Prop. Fide, to the American bishops, October 20, 1884.

Thus the S. C. de Prop. Fide expressly says:

Quod vero pertinet ad remedia repressiva seu poenas animadvertant Ordinarii in suo pleno vigore manere remedium extrajudiciale, ex informata conscientia, pro occultis reatibus a S. Concilio Tridentino constitutum, sess. 14 *chap.* 1. *de Reform.*

(Appendix, III. Pl. Coun. Balt.)

Titius was guilty of *crimen occultum.* He was well under the influence of strong drink on several occasions. He is liable to give, if he has not already given, grave scandal. He is already sacrificing the dignity of the priesthood and jeopardizing the spiritual interests of the faithful. The bishop is perfectly within his rights when he

suspends Titius *ex informata conscientia,* without previous warning or canonical trial or other legal formality. *Justam ac legitimam causam suspensioni ex informata conscientia, praebet crimen seu culpa a suspenso commissa.* (Instr. *Cum Magnopere,* Oct. 20, 1884.) The Code in Canon 2191 points out the circumstances under which this suspension can be inflicted for a public offence.

The suspension may not be inflicted, *ex informata conscientia, in perpetuum,* but only for a certain period of time, or until the delinquent manifests sufficient signs of amendment.

Stremler (p. 329) says that no general rule can be laid down regarding the duration of the suspension; but he thinks that two or three months are a long time and that the suspension should rarely last longer. Only very exceptional circumstances would justify a suspension to last six months. The suspension inflicted "ad beneplacitum nostrum" ceases on the death of the bishop who inflicts it.

2. We proceed now to the discussion of the second question, namely: Had the bishop a right to order Titius to a monastery to do penance without giving him the benefit of a canonical trial?

In the Instruction *Cum Magnopere* of the Propaganda to the bishops of the United States, October 20, 1884, concerning the manner of proceeding in criminal and disciplinary causes of ecclesiastics, we read:

I. The Ordinary is bound, by virtue of his pastoral office, diligently to look after the discipline and correction of ecclesiastics. Hence he should watch assiduously over their conduct, and make wise use of the remedies established by the canons, either for the purpose of preventing or doing away with abuses which sometimes creep in among the clergy.

II. These remedies are of two kinds: some are *preventive,* others ***repressive.*** The former have for their object the prevention of evils,

the removing of causes of scandal, and the avoiding of voluntary proximate occasions of sin. The latter are established for the purpose of recalling the delinquent to the path of duty, etc.

III. The application of these remedies is left to the conscientious discretion of the Ordinary, provided, etc.

IV. The following are the chief preventive remedies: *spiritual exercises,* etc.

V. Before they are imposed upon any one, the facts calling for them must be verified *in a summary manner,* etc.

Now in the case of Titius, the bishop acted within the provisions of this Instruction in applying a *preventive* remedy, namely, in commanding Titius to make a retreat in a monastery.

"A bishop, therefore, has the right to impose a special spiritual retreat upon an ecclesiastic who is the occasion of scandal, or who remains voluntarily in the proximate occasion of sin, and who consequently, though not yet guilty of crime, follows a slippery road leading to spiritual ruin." (Smith, Eccl. Law, n. 1746.)

As space will not allow us to treat of this more fully, we refer our readers to Smith, Elements of Eccl. Law, and New Procedure, and Zitelli, Apparatus Jur. Eccl., etc.

3. Did the bishop act within his power when he obliged Titius to defray his expenses while in the monastery?

We take for granted that Titius was ordained *ad titulum missionis.*

Some readers may be under the impression that the Third Plenary Council of Baltimore changed the status of priests ordained *ad titulum missionis,* with regard to removal, etc. The council did not change the status of the ordinary missionary priest. It did create *irremovable* rectors and made special laws governing their removal, but it reaffirmed the laws of the Second Plenary Council of

Baltimore, regarding all other priests ordained *ad titulum missionis.* In the Instruction of the Propaganda to the American bishops issued in 1884, the title of which is: "De modo servando in cognoscendis et definiendis causis criminalibus et disciplinaribus clericorum in Foederatis Statibus Americae Septentrionalis," the laws of the Second Plenary Council of Baltimore, concerning missionary priests, with the exception of the newly created irremovable rectors, are expressly stated to be still in force.

Concilii Plenarii Baltimorensis II decreta, n. 125, *quoad naturam missionum, et nn.* 77 *et* 108 *quoad juridicos effectus remotionis missionariorum ab officio, nullatenus innovata seu infirmata intelliguntur, salvis iis quae recentius de parochis seu rectoribus inamovibilibus constituta sunt* (cf. Appendix, III. Pl. Con. Balt., p. 292, XLV).

If we refer now to the II. Pl. Con. Balt., n. 125, we read:

Parochialis juris, paroeciae, et parochi nomina usurpando, nullatenus intendimus ecclesiae cujuslibet rectori jus, ut aiunt, INAMOVIBILITATIS *tribuere; aut potestatem illam tollere seu ullo modo imminuere, quam ex recepta in his provinciis disciplina habet episcopus quemvis sacerdotem munere privandi aut alio transferendi.*

And n. 77 of the same Council we are told that, as was decreed in the Provincial Council of St. Louis, in the year 1855, and confirmed by the Holy See: *Sacerdotes quibus per Ordinarii sententiam sacerdotii exercitium interdictum fuerit, nullum jus habent ad sustentationem ab eo petendam, cum ipsi se sua culpa missionibus operam navandi incapaces reddiderint.*

The American bishops proposed the following Dubium to the Congr. of the Propaganda:

Utrum et quomodo declarandum sit, sacerdotes titulo missionis ordinatos, qui se indignos rediderunt sacri ministerii exercendi, hoc

titulo privari; neque Ordinarium teneri ad sustentationem illis praebendam.

The Sacred Congr. answered on Feb. 4, 1873: *In casu, prout exponitur praevia declaratione ejus modi sacerdoti ab episcopo facienda, et quamdiu praedictus sacerdos in sua prava vivendi consuetudine perseveret, nullum exhibens sincerae respiscentiae signum, episcopum non teneri ad sustentationem illi praebendam.*

Strictly speaking, therefore, the bishop had a right to require of Titius that he defray his own expenses while in the monastery, since Titius, by his own fault, forfeited his living, his missionary title *ad honestam sustentationem.* If, however, Titius have no means to defray his own expenses, the bishop will provide means *ad* NECESSARIUM *sustentationem,* but not what would make life pleasant. If the bishop knows that Titius has means of his own to procure the *necessaries* of life, then he is not obliged to defray any of Titius' expenses. Stremler says: "For the rest, dismissal from benefice always leaves to the ecclesiastic who is dismissed the right to the means of subsistence. The ecclesiastical judge should assign to the cleric who is deprived of his benefice, and who has no other means of subsistence, an alimentary pension, or keep him in a monastery, according to the gravity of his offense, and not allow him to tramp about, deprived of all means of living."

Though by the law of the Code the removal of irremovable and removable pastors is in detail regulated (Canons 2147-2161) and the United States have been placed under the Common Law of the Church, this does not prevent the bishop from inflicting the suspension *ex informata conscientia.* He is bound to the formalities of the Code in cases only of definite removal.

LVII. THE USE OF MORPHINE.*

Question. How is the use of morphine, or the morphine habit, to be considered from the moral standpoint?

Answer. 1. The use of morphine can not be absolutely prohibited as contrary to morals, when it is merely a question of allaying nervous excitement, or of alleviating pain. But in view of the imminent danger of its misuse and the bad effects it is apt to produce, morphine preparations should be used only by direction of a conscientious physician.

2. The excessive habitual use of morphine is without doubt sinful. Its excessive use will become grievously sinful, even a mortal sin, in cases where it works serious injury to bodily health, or where, on account of the pleasure and comfort it affords, a complete intoxication, temporary deprivation of the use of reason is thus produced. The latter excess would render the solitary case a mortal sin; in the habitual excessive use the mortal guilt is found in the consciousness of the injury which the continuous consumption of the drug will work, so that in the case of a determined breaking off of the habit, an occasional temporary relapse into the use may be dealt with leniently.

3. If the use of the drug does not reach the degrees mentioned under No. 2, then the excessive use, although sinful, is not exactly a mortal sin.

4. With those dangerously sick, when death is approaching, the use of morphine for the purpose of stupefaction, even if done to alleviate pain, can not be morally justified, unless it is intended to produce refreshing sleep or as an anesthetic in a surgical operation. Otherwise, to deprive the patient of consciousness so shortly before

*By A. Lehmkuhl, S.J.

death must be looked upon as an ordinary shortening of life, which I am not obliged to oppose, if some one undertakes to do it in good faith in order to prevent greater evils, but in which I should not be allowed to consent or assist.

LVIII. THE VOW TO ENTER AN ORDER.*

Paul, a college-graduate, has taken a vow, from religious motives, to enter an Order. In fulfilment of his vow he entered an approved congregation, and after passing a few weeks in the novitiate he comes to the conclusion that his health will not stand the strain of the many spiritual exercises and tasks prescribed in this community, and he leaves of his own accord.

Question: Has Paul satisfied the obligations of his vow?

A vow in general is a particular law which the votary imposes upon himself, for the glory of God, and it must for this reason be interpreted according to the spirit that prevailed in the taking of the vow. There ensues for Paul, therefore, the following rules governing the fulfilling of his vow.

1. If he has not expressly intended to enter an Order *sensu stricto* with solemn vows, then his vow is fulfilled by entering an approved congregation with simple vows, so the Doctors universally teach, and in that case the *votum ingrediendi religionem* does not belong to the vows reserved by the Pope.

2. With regard to *the time* the vow is to be fulfilled *soon* if the obligation is present and the opportunity given, and this applies especially to personal vows, among which belongs the vow of entering the religious state. Hence St. Alphonsus says (Homo Apostolicus): "If the vow is perpetual, such as entering the religious life, then the theologians teach that one sins *grievously* if the fulfilment is delayed more than six months without just cause," and in his Moral Theology (lib. III n. 221) he adds: *Consentit etiam Sporer si vovens excedat aetatem 40 annorum. Censent tamen cum Tamburino, excusari a mortali juvenem 15 vel 16 annorum, qui differt per tres vel*

*By J. Schwienbacher, C.SS.R.

quatuor annos: quia (ut dicunt) hoc tempus videtur parva materia respectu ad servitium totius vitae. Sed huic non omnino acquiesco, nisi adsit justa causa dilationis. Such *causae justae* are there given by way of example.

3. Concerning our chief question, Paul's leaving the order, the vow to enter an Order imposes the obligation, under penalty of grievous sin, of employing a moral diligence (not an extraordinary or supreme effort) to obtain admission into an Order, in which at least the essential rules are observed, to enter within due time, to persevere faithfully in the same, and when the vocation has been proved to become professed in the Order. This general rule finds in our case its practical application in the following manner:

I. Paul is *not* allowed to enter an Order, in which the discipline *"quoad observantias principaliores"* has become lax. (St. Alph: lib. IV, n. 72.)

II. According to the intention of the votary St. Alphonsus distinguishes in the vow before us three cases, to which correspond different standards of obligation. (Comp. Homo Apost. v, 34.)

In the first case the votary merely obliges himself to an *earnest trial* of the religious life. In this case the difficulties confronting Paul excuse his action and should they cease later on, he will not be obliged to return because he has fulfilled his vow by making an earnest trial.

Of the second case the Saint says: "If any one vows to make *profession,* he must set about doing so even under great difficulties unless the religious life becomes absolutely unbearable for him."

The third case, which is to be supposed in our vow unless the first or second are positively ascertained, is according to St. Alphonsus as follows: "If a vow is simply made to *enter an Order,* one is obliged to enter and remain therein, and it would be a grievous sin to

leave again, without just cause. It would be considered a just cause for leaving, if one found a manner of living which exceeded one's strength, or if one had to suffer great and prolonged sadness." Thus the Saint.

Now this just cause for leaving is present in the difficulties which Paul discovered, provided they were really insurmountable for Paul, and for this reason he is not blameworthy, especially if, to avoid self-deception, he has sought the advice of an experienced confessor. With justice Göpfert, however, adds to this the provision: "Should the just cause cease to exist, one must return to the order," for in such case the fulfilment of the vow would no longer be morally impossible. The same authority, however, remarks that "the vow is always subject to the condition that the Superior must accept and retain the votary."

III. If Paul in his vow expressly intended a *certain* Order, and if the fulfilment of this vow is morally impossible in regard to this order, he is of course not obliged to enter any other Order. If, on the contrary, he did not intend any Order *in specie,* he is, if after prudent counsel these difficulties are not to be looked for in some other Order with discipline, obliged to seek admission there, but after three or four unsuccessful trials, he may safely remain in the world, as Marc, n. 2140 (2) in a similar case justly remarks, because in such case the fulfilment of the vow may be looked upon as impossible.

IV. In conclusion the following rule may be quoted, found especially in early authorities: "It should be observed that the one who has vowed to enter an Order and has failed to gain admission in the communities of his province, is not obliged to seek admission away from his country. If a woman she is not obliged to leave her native place if there are convents there" (Homo Apost. v. 34).

The reason adduced is that as a rule it can not be presumed that the votary intended to bind himself for such a sacrifice. Lehmkuhl comments on this in view of our modern circumstances: *"Quod autem antiquitus dixerunt, pro nostri temporis circumstantiis non universim admiserim, nisi peculiares exstiterint difficultates."* (Casus Consc. vi, n. 294.)

The Code in Canon 1309 rules that the vow to embrace religious life is reserved to the Holy See only in the case where the vow is unconditional and made after a person was eighteen years of age, and where one vowed to enter an organization with solemn vows.

LIX. RESTITUTION ON ACCOUNT OF INCENDIARISM.

A fire broke out in a village which partly destroyed a certain house of Mr. N. N. The owner was insured, but nevertheless suffered a loss of about $4,000, which was all the harder for him to bear, as he, after toiling and laboring throughout the entire year, at its end considered himself fortunate if he was not in debt, there being no capital or savings. How the fire started, whether caused by negligence or by some malicious hand, could not be ascertained. Some time had elapsed when there came to the confessional of Father Sempronius a woman who confessed having been the incendiary, in about this fashion: "Your Reverence, I was the incendiary! I set fire to the property, and did it out of revenge because the farmer had given me notice to leave. I regretted it immediately, and even attempted to put out the flames, but it was too late. I know that I have committed a great sin. It gives me no peace, day or night, and I am ready and willing to make restitution as far as lies in my power. Of course I can not make up the loss entirely, as I am only a poor servant-girl. I have saved so far $400, this I will relinquish no matter how hard it is to do so. But, Reverend Father! what shall I have to do with my future savings? I can save yearly eighty or ninety dollars. If I could keep this I should have a prospect of marrying. If, however, I must sacrifice all my earnings, I can never think of marrying, and shall eventually become a burden upon the community. Still I know that I have sinned grievously, and will abide by what your Reverence says, if only I may clear my conscience of this sin."

What answer will Fr. Sempronius have to give to this penitent, whom we will call Pelagia, so that the strict requirements of justice

and restitution may be complied with, and also that a too difficult burden may not be laid upon Pelagia, which, though lived up to in her present grievous remorse, would later be found impossible to bear?

The answer is really very simple. It is evident that Pelagia, simply because she was after her unfortunate deed immediately seized with contrition, and because of the fact that she sought to extinguish the fire, is not excused from restitution. At the moment of causing the harm, she was conscious of the injurious consequences of her action, and hence her act must be considered as morally *voluntaria* and therefore grievously sinful. As the same was also *causa efficax damni,* all the requisites for the obligation of restitution are present. But according to the moralists the *damnificans* is wholly or partially excused from restitution when, and for as long as there would arise for him a *notabiliter* greater *damnum* than that which the *damnificatus* himself has suffered. (Alph. IV, n. 697.)

Let us examine if this is not Pelagia's case. All she has with which to make restitution are the savings from her wages. As regards the $400, which she has laid aside, one could not oblige Pelagia to part with the entire sum at once, for in case of emergency she would be left wholly without means. How about her future savings? Will she be obliged to give them all up for restitution? First of all Pelagia is entitled, *ex jure naturae,* to lay aside so much of her savings, that in her old age, in case of inability to work or other impediments, she may be able to support herself. No one can or should expect of her to deprive herself of the most necessary means in order to make restitution, for otherwise she would become a burden to the community and lead a miserable existence. That would be *nimis durum!* And why, in conclusion, should a third party—namely, the community, be made to contribute toward a restitution which is strictly a matter *ad personam* for Pelagia? In

examining *to what extent* Pelagia should apply her savings in making restitution we must furthermore take into consideration the following circumstance. If Pelagia can not retain her savings, then she will have little hope *ipso facto* of winning the security and protection of wedlock; for if she has not at least some money it will be a hard matter for her to find some one to marry her. In her savings alone she has a possibility of entering the married state such as she desires. Though the duty of making restitution will not cease for Pelagia in the married state, she would presumably be able to do little or nothing toward making good the harm she has caused. The requirements of household and motherhood would probably demand the little that she might be able to earn herself. Must she on this account renounce all idea of marrying? Is not Pelagia entitled *ex jure naturae* in the event of a chance offering itself? Even the ecclesiastical marriage laws know of no prohibition in our case. To remain unmarried for life, a state for which she had neither inclination nor vocation, would be expecting something akin to heroism on Pelagia's part, and a renunciation of the married state would without doubt be a far greater *incommodum* than the *damnum* to the injured party if in the married state she is unable to make further restitution: besides, there would be the dangers to her soul if unwillingly she were made to lead a life of celibacy. There would therefore be a *damnum altioris ordinis* present in consequence of which Pelagia would even be in conscience bound to enter into matrimony, if there was a possibility of her doing so.

Hence there apply in our case the principles *"Nemo tenetur restituere cum suo valde majore detrimento, quam sit creditoris commodum"* (Kutschker: "Doctrine of Restitution"), and *" Bonum inferioris ordinis restituendum non est cum detrimento boni superioris aeque gravis"* (ibidem), inasmuch namely as *matrimonium* belongs to

a higher order of good than the mere material *bonum* which the injured farmer would receive if the *persona ad compensationem obligata* did not enter the married state. If therefore the obligation of restitution can not be insisted upon to the extent that Pelagia must on that account renounce a natural right, such as the married state, then one must also allow her the means necessary to obtain this natural right. In other words, Pelagia can not be bound to devote her future savings to restitution to such an extent that because of it she can not hope for a possible matrimonial alliance. Nay, more, if one reflects how trifling her savings are in reality—what are eighty or ninety dollars a year? provided of course she avoids all unnecessary outlay—one could ask her at most to give up a trifling part, or more probably, none whatever, from these small savings so long, at least, as there is a probability of her getting married. Should Pelagia however *not* enter the married state, she would only be called upon, as we have already mentioned, to deprive herself of so much of her savings, past and future, that she will not be left entirely without means in her old age, or in the event of inability to work. If she should possibly have poor parents to support besides herself, then, of course, this natural duty of filial affection would take the place of the duty of making restitution. In the event of Pelagia's ever becoming possessed of considerable means, by inheritance, for instance, she will, of course, be obliged to use such moneys for restitution in so far at least as she does not necessarily require them for her own needs.

LX. IN REBUILDING A PARISH CHURCH MAY THE NAME BE CHANGED?*

In a certain parish, composed chiefly of working-people, the church was found to be too small, and a new building was imperatively necesssary. From many quarters the wish was expressed that the new church should be dedicated to St. Joseph, patron of the working classes, particularly because the patron saint of the church is a saint little known. May the title of this church be changed?

Ever since the time of the apostles every church receives a name, as does man in Holy Baptism. It is self-evident that the patron of a place or of a country has nothing to do with the title of a church.

Churches may be dedicated to the Most Holy Trinity; to Christ; or to one of the mysteries in His life, as, for instance, the Transfiguration; the Blessed Virgin and events from her life, such as the Annunciation; the Angels and Saints. A church can not be dedicated without special permission from Rome to a servant of God only declared Blessed or Venerable. Generally a church has only one patron Saint, but there are numerous cases where a church is dedicated to several Saints, as Cosmas and Damian, and even when their feasts are celebrated on different days, as Saints John and Francis.

Rome adheres to the principle that the title or name of the church should not be changed lightly. It would indeed hurt the Christian feeling, if without any ado a patron saint, after having been regarded for centuries perhaps as the intercessor of a parish, should be suddenly deposed. The Apostolic See has nevertheless regard for the wishes of the people by consenting to the addition of a second name, or patron, to the old one.

*By A. Pachinger.

Gasparri (de Euch. 1, 93) writes: *"Titulus ecclesiae in genere mutari non debet, id est neque alius addi, neque aliquis, si titulus multiplex est, supprimi neque alius substitui. Haec mutatio fieri potest, quando ecclesia diruta rursus extruitur, sed etiam hoc in casu maxime decet, ut idem titulus retineatur, et ad summum novus addatur, ut praecepit S. R. C. 16 Jan., 1885."*

In the year 1843 the question was proposed in Rome: *Utrum semel assignato titulari patrono alicui ecclesiae, liceat episcopo rationabili ex causa illum in alium immutare; et quatenus negative, enixe efflagitat episcopus, ut ex apostolico indulto haec sibi facultas in casu elargiatur.* The answer was: *ad 1. non licere: ad 2. pro gratia assumendi S. Annam in contitularem cum S. Andrea Apostolo.*

In Rome the question introduced at the beginning has been before decided that: The old title is to be retained, and a new one can be added to it. Gasparri introduces three such decisions (l. c. p. 92.) and summarizes the result in these words:

"S. C. C. censuit, translata ecclesia parochiali in aliam recenter erectam, titulum antiquum esse retinendum et ad ecclesiam subrogatam esse transferendum, sed addi posse titulum secundum."

Important is the observation of this famous canonist: *"Quando ex facto S. Sedis novus titulus antiquo superadditus est, antiquas suas praerogativas non amittit, et omnes tituli habendi sunt aeque principales. Episcopus titulo existenti alium addere, citra novam ecclesiae dedicationem, auctoritate propria non potest."*

In our case the pastor can therefore safely elect St. Joseph as *contitularis,* asking the Bishop, at the dedication of the new building, to add this new name to the old one. The previous patron saint must, however, be retained, and his feast day is to be observed as heretofore according to the rubrics; the new one, now *aeque principalis,* will be treated by the parish priests in Breviary, and holy Mass, exactly the

same as the old patron saint. *"Si titulares Ecclesiae plures sunt, non per modum unius sed divisim, omnium festa propriis diebus celebranda sunt ritu indicato, dummodo sint omnes aeque principales"* (l. c. 94.)

LXI. MARRIAGE DISPENSATION IN CASE OF TEMPORARY VOWS.*

The following case came up unexpectedly before Father Arcadius. A *Monialis,* whose temporary vows would have lasted about three months longer, and who, in order to marry, had secretly left the convent, applied to him for dispensation. Arcadius resolves that this is an *impedimentum occultum;* and makes application to the Penitentiary Apostolic, enclosing sixty dollars, and asking for a dispensation. No answer came. Then he telegraphs, prepaying the answer; still no reply.

What is to be done in such a case? The answer is briefly as follows:

1. Arcadius is in error. An *impedimentum* can be *publicum notorium,* either *notorietate facti* (when the fact is known publicly) or *notorietate juris*—i. e. through a judicial decree, or of course also through an act amounting to the same, an act which may be called before the forum of the (spiritual) tribunal. The public act of a profession of vows (though simple) on entering an Order, is certainly an act of this kind. Arcadius has no privilege to interfere in a notorious impediment, either as confessor or as private adviser, because it belongs before the ecclesiastical court; indeed, if not prevented by the seal of Confession, he was bound to report the case to the ecclesiastical authorities.

2. Arcadius, in his proceeding in this case, made a second mistake: He wrote to the Penitentiary Apostolic. This congregation grants marriage dispensations *pro foro interno,* and also *pro foro externo,* where the poor are concerned. And even in their case, when

*By H. Rett, O.F.M.

it is a question of a public impediment, the applicant's full name must be given. Arcadius did not do so; which was the third mistake therefore. At any rate this kind of a dispensation (from religious vows) would seem a matter for the forum of the *S. Congr. Ep. et R.*

3. He enclosed money as fee in advance, a good deal more obviously than required, for answer and agentia, a fourth mistake. Rome never grants a dispensation if any payment is made in advance and apparently with the intention of securing the dispensation; *nam*: *simoniam redolet!* I recall a case where a religious, so as to be able to marry, wrote to Rome for a dispensation, and inclosed a sum equivalent to about fifty dollars in our money. The money was retained, of course (and properly so), but the answer came: Let the person apply once more for the dispensation, but not enclose any money; then she will receive dispensation at once.

4. The telegraph should not be used for the purpose of securing a dispensation for marriage, although it sometimes is done.

The case here referred to was eventually disposed of in the following manner: It was reported to Rome *expresso nomine,* by the Bishop; who subsequently received power to dispense the applicant from her vows, after which there was nothing to prevent the marriage. A *congrua poenitentia* was to be imposed. As penance for the breaking of religious vows, that should have lasted three months longer, monthly Confession and Communion for a period of three or four months will suffice.

LXII. INTERRUPTIO MISSAE FOR AN URGENT SICK CALL.*

The curate, Father Christopher, was celebrating holy Mass at a station some eight miles distant from his church; the Blessed Sacrament not being kept at this station. Suddenly he heard a commotion in the sacristy—and immediately the sexton comes to him at the altar, reporting in a whisper that an old lady in the village had had a stroke of apoplexy and was near death. The priest had just finished the Pater Noster, and considering that his Mass would be over within a few minutes, he continues *in celebratione.* Before the *sumptio corporis* he breaks off a particle from the large host, as the *Viaticum* for the sick person. The Mass finished he hurriedly responds to the urgent sick call.

Now the question: Did the priest do right in both points—namely: (1) In finishing the Holy Sacrifice, and (2) *in fractione alicuius partis ab hostia maiori?* If not, what ought he have done?

Ad 1. We may here suppose two cases:

a. If the *moribunda* is considerable distance from the chapel, where the holy Mass was being said, so that the priest realizes he can not return within *tempus debitum missam celebrandi ante meridiem* to finish his Mass he should immediately consume the consecrated species *omissis omnibus aliis* (Cfr. de Herdt, Sacrae Liturgiae Praxis, tom. II. p. 3, pag. 237).

b. If, however, he can return within the time he should interrupt the Mass, to continue it where he left off when returning from administering the last Sacraments. But in this case *Sacerdos diligentissime curare debet, ut Ss. Sacramentum reverenter custodiatur, nisi consultum existimaverit, illud in tabernaculo occludere* (de Herdt pag. 236 with quotation from Bened. XIV de Sac. 118).

*By J. C. Gspann.

Still another possibility may be supposed. The priest may be of the opinion that he can return before the close of the time set for the celebration, *ad continuationem missae,* but it becomes impossible for him to do so, be it on account of a long General Confession, or a second sick call, or for some other good reason. De Herdt is of opinion that in that case the Blessed Sacrament should be reserved, to be consumed upon the following day *post sumptionem s. sanguinis.**

Ad 2: Bishop Müller (Theolog. Moralis, III. pag. 223) allows *"laico dare partem hostiae majoris."* 1. *In casu necessitatis, deficientibus hostiis minoribus, quando nempe s. viaticum esset ministrandum moribundo. 2. Si unus alterve communione reficiendus non posset sine incommodo exspectare, usquedum in alia Missa consecratae sint hostiae minores.*

No. 1 is literally true here; a doubt in regard to permissibility is completely excluded. A difficulty would exist where there were lack of a proper vessel or of a second corporal. If a pyx is not at hand, then the Blessed Sacrament should be conveyed in a corporal. If there is not even a second corporal, then there is nothing to be done, but to cover the chalice with the paten upon which the Sacred Host is laid, and let it remain upon the altar; the Viaticum to be carried in the corporal to the dying. For the sake of completeness, we will suppose the possibility of the priest being called to a *moribundus, ante consecrationem.* If he returns within an hour, he should continue the Mass where he left off; but if the interruption is of longer duration, *"ordietur ab initio"* (Alph. lib. VI, n. 354).

*Would it not be allowed, in this case of extremely rare occurrence, to continue the Mass *post tempus debitum, per epikiam,* as there are exceptions made, for instance in Loretto?

LXIII. A CASE OF RESTITUTION.

Lucy, when a servant in a Jewish merchant's house, made a false statement before an insurance adjuster, which now troubles her conscience. A fire had broken out in an out-house, and in order that he might collect a larger sum, her master falsely declared that a quantity of clothing had burned, and he induces his clerk and Lucy to confirm his statement. The merchant is now a bankrupt, the clerk in comfortable circumstances, Lucy still without means and a servant in another family. The confessor imposes upon her the duty of restitution, because neither the merchant nor the clerk will make it. Lucy has nothing, and moreover, is not aware of the amount or to which company to make the restitution. The confessor promises to make inquiries and to let her know the result. Meanwhile he has scruples, and he asks whether he has acted correctly.

The obligation of Lucy to make restitution is plain in the case under consideration, and she shares this obligation with the clerk. One witness would not have sufficed, and Lucy therefore is made jointly responsible for the whole amount. If the merchant makes no restitution then Lucy and the clerk must refund the money with the right, of course, to make Levi reimburse them; should the latter be without means, Lucy must bear half of the amount, the clerk being answerable for the other half; the latter not paying, this part too would fall upon Lucy, of course, with the right of seeking indemnity from the clerk. So, therefore, the decision of the confessor is right in principle. Now let us see whether his practical proceeding is to be sanctioned.

First of all it appears to us as not well, nor advisable in general, to undertake such an inquiry. There is always present the danger to the seal of Confession. Moreover, the penitent's ready acquiescence presumed, the matter is an unpleasant one and may lead to unforeseen complications.

There is, moreover, no necessity for such inquiry in our case. Lucy is without means, and can therefore not make restitution. Indeed, a way is easily found out of the difficulty.

It is here the question of making restitution to an insurance company. These companies exist and prosper by the premiums of the insured. The rate of premium is determined by the probable averages of fires, without regard as to whether a fire is incendiary or not. The company rightfully seeks by clauses and searching examination to avoid fraudulent claims, but can not possibly prevent all fraud on the part of the insured. Hence in fixing the rate of premiums the company takes into account all these circumstances. It follows that the insured by their premiums are really made to pay for the fraudulent claims, and they consequently are the ones injured by fraud.

Restitution is therefore really due to those paying the premiums—the insured. The number of the latter, however, is so great that only an infinitesimal part is borne by the individual. Their names are unknown. Therefore it appears that restitution in our case may be turned over to the poor. By so viewing the case (cf. Lehmkuhl I. 11, 34), the difficulty for Lucy is easily solved. She has the honest intention of making restitution, but through her poverty is unable to do so. For this reason the confessor may direct her to discharge her duty by giving alms to the poor, of which she herself is one, and thus to pacify her conscience. The merchant and the clerk, of course, remain under obligation of restitution.

LXIV. LAY CONFRATERNITIES FORBIDDEN IN CONVENT CHAPELS.*

The School Sisters of St. Francis in X. wish to have a pious confraternity established in their consecrated public chapel as an incentive to a growth of devotion among the people. The superioress applies to a priest asking the question: May lay confraternities be established in convent-churches, or chapels?

The question is not a new one, for such early authors as Lucius Ferraris in his *"Bibliotheca prompta,"* and others, have answered the same in a negative sense, referring to the interdiction of the Sacred Congregation Episc. et Regul. of April 6 and November 6, 1595, of March 15, 1599, and of May 5, 1645: *"Confraternitates laicorum erigi et institui non possunt in Ecclesiis Monialium."* (Ferraris: tit. *"Confraternitatis,"* Art. c. I. n. 38.) This prohibition was repeatedly renewed later, and even in recent times, and the answer of the Sacred Congregation of Indulgences of February 29, 1864, makes it plain that the same concerns all chapels of orders as well as religious congregations of women. With great emphasis, this prohibition was again renewed in the letter of the S. Congr. Episc. et Regul. of the 22d August, 1891, to the Bishop of Foligno, in the words: *"Non placet Sac. Congregationi, ut in Monasteriis Monialium sub quovis titulo instituantur Confraternitates laicorum, ad tollenda quamplurima, quae exinde oriri possunt, incommoda; imo praecipit, ut erectae tollantur, secus transferantur."*

That these decisions are not merely limited to individual cases and convents, may be learned, among others, from P. Beringer's work on Indulgences, approved by the Sacred Congregation of Indulgences, which enjoys a great reputation. There it is stated as gen-

*By J. Schwienbacher, C.SS.R.

eral rule: "In churches or chapels of orders of religious women, whether religious communities in the strict sense of the word, or religious congregations, confraternities of laymen can not be established (II. T. IV. Sec. 4, III. n. 2.) The same principle we find proclaimed in the book about the arch-confraternity of Our Lady of Perpetual Help published in Rome, which in explaining that the same may be erected in every public church or chapel, states explicitly *"attamen eximendae sunt ecclesiae monialium, in quibus juxta plures Declarationes S. Congr. Episc. et Regul. institui nequeunt Confraternitates laicorum"* (Pars III. cap. I. Sec. 55, II. n. 2).

Exceptions from this rule are, according to Beringer, the League of the Sacred Heart of Jesus, and the Confraternity of the Immaculate Heart of Mary, for the conversion of sinners. Beringer, however, remarks that "In both these cases it appears only allowable that the nuns themselves and inmates of their institutions, also the pupils of such institutions, but not other lay people of either sex may belong to these confraternities."

The ecclesiastical decisions in the matter do not warrant the prohibition to be extended to pious societies of all kinds. As, however, according to Beringer even the Sacred Congregation of Indulgences styles the same confraternities at times differently, as congregations, sodalities, pious unions, confraternities or arch-confraternities; thus the scope of the word *"Confraternity"* is determined more from the object than from the name. A chief characteristic of confraternities consists, as Beringer observes, that they must be *canonically* erected, i. e., with ecclesiastical authority, at a certain altar or in a certain church, and for this reason must remain under guidance and control of that church, while the pious societies or unions, even though conducted by the clergy and enriched with indulgences, are as a rule,

only simply approved by the ecclesiastical superiors, not, however, canonically erected.

A pious union, therefore, which has the characteristics, just mentioned, of a confraternity, must not be erected in a convent chapel, no matter under what name. For pious associations, however, which have not the characteristics of a confraternity, there ensues from the ecclesiastical prohibition of lay confraternities in convent chapels, the grave warning to be earnestly vigilant lest the zealous coöperation of the nuns in lay societies might open the door to the very improprieties which the Church is so anxious to exclude: *"Ad tollenda quamplurima, quae exinde oriri possunt incommoda."* (S. Congr. Episc. et Regul. 22, Aug., 1891.)

The Code is somewhat more lenient—allowing the erection of associations of women in the churches or chapels of religious women, and of pious organizations whose scope is to gain spiritual favors by means of the apostolate of prayer (cf. Canon 712). In general the former regulations are to be the guide in this matter, since the convents of Sisters are not to be disturbed by meetings especially of a business character necessarily connected with the government of confraternities strictly so-called.

LXV. CASUS MATRIMONIALIS PERPLEXUS.

A certain newspaper, somewhat hostile to our creed, made much of the following news item: The marriage of Mr. P. and Mrs. P. was to take place in the parish of X. Mrs. P. had been divorced from her husband, who recently died. All the preparatory steps had been taken and there appeared to be no valid obstacle. When the bridal couple made their Confession, the bride informed the priest that for fifteen years she had been living in concubinage with the bridegroom, whereupon the priest became very angry, and after having given her absolution, he hurriedly left the confessional and made the matter known to the pastor.

The latter sent for the bridegroom and informed him that he must get from the Bishop the necessary dispensation (the affair happened in a diocesan city), otherwise he could not get married. The Bishop being on a journey, the marriage could not take place that day. Upon the Bishop's return the dispensation was most courteously granted. The newspaper joins to this item the question: "Why did the pastor, on an occasion shortly before, marry two persons under similar circumstances, without protesting? Could it depend upon the amount of the fee? And far worse. The seal of Confession was broken." Thus far the newspaper. A correction appeared in the Catholic paper of the place stating the case correctly as follows: Bride and bridegroom approached the Sacraments on the morning of the wedding-day, and all preparations were made for the ceremony. The confessor advised the bride that she could not be married and directed her to go to the pastor and inform him that there was an impediment. The couple in fact did go to the pastor, who, however, told them to apply to the Bishop

with the explanation that a marriage could not take place until a dispensation was received. The couple then proceeded to the Ordinary for the dispensation and as he was away from home, they sent a despatch after him, which, however, did not reach him. On his return, the following day, the Bishop readily granted the dispensation from the *impedimento occulto.* The couple took the document to the priest and were united in marriage. No fee was asked either for dispensation or marriage.

That the newspaper report had a malicious tendency is plain. It is equally plain that the seal of Confession was not violated and that money played no part. Let us leave that aside and turn to our main point. Did the confessor act rightly in directing the couple, when Confession was made immediately before the ceremony for which everything had been put in readiness, to make known to the pastor an impediment, *occultum,* at that, for which dispensation is obtainable?

Formerly there was considerable controversy about the *casus perplexus.* The Code, however, in Canon 1045 now gives to the local Ordinaries power to dispense with all impediments, except priesthood and affinity in the direct line from consummated marriage, if the impediment is found out only when all things are ready for the marriage and the marriage cannot be delayed without probable danger of grave evil. If the Ordinary cannot be reached in time, or not without danger of violating the seal of confession, the pastor and even the confessor can dispense from those impediments in occult cases. The dispensation given by the confessor in sacramental confession is valid only for the internal forum. If the parties were willing to go to the pastor, it was proper to advise them to do so; if they were not willing, the confessor should have dispensed them.

LXVI. TWO CONSECRATION CASES.

[Ciborium extra corporale—super corporali.] I. A certain priest met with the following embarrassing accident. Before Mass this priest directed the sexton to place the ciborium, well-filled with hosts, upon the altar, so that he might consecrate them during the Mass. The sexton places the ciborium upon the altar, where the priest at the beginning of the holy service notices it, standing beside the chalice and *outside the corporal.* At the offertory the priest forgets to offer up also the small particles, and he likewise forgets at the consecration to place the ciborium upon the corporal and to uncover it. Hardly is the consecration over when he, to his utter consternation, catches sight of the ciborium, outside the corporal. What is to be done? Are the small hosts consecrated or not? Must he repeat the words of consecration absolutely, or only conditionally? Only a few hosts are left in the Communion-cup, there is a considerable number of communicants, and this is the last Mass; this thought is deciding; in his dilemma the priest repeats the formula conditionally, and then administers Holy Communion from this ciborium. To solve this case, we will in the first place answer the question, What conditions are necessary for the validity of the consecration?

For the validity of the consecration there is required, in the first place, as in the case of every Sacrament, the intention on the part of the dispenser to do as the Church does, and here a mere virtual intention suffices. Furthermore it is required that the proper matter be physically present; this is conditioned by the words *hoc* and *hic;* furthermore, that the matter be meant *in individuo,* where again the mere virtual intention suffices. The physical presence is

naturally to be understood morally, corresponding to the meaning of the words and the nature of the function; so, for example, a host concealed under the corporal, or enclosed in the tabernacle, can not be considered physically present; on the other hand, it is not essential that the *materia* be actually held by the hands, or that it must be seen, for the hosts in the ciborium may be covered, *"nam contentum cum continente reputatur et moraliter praesentatur."* (Laymann, L. V. Tr. IV. c. II.)

In our case both conditions for the validity of the consecration, namely the *physica praesentia materiae* and the *intentio ministri* are, though only *virtualiter,* present; the first condition, because the ciborium, filled with particles, was standing on the altar beside the corporal; the second, because the priest, before Mass, and while vesting in the sacristy, had the actual intention to consecrate the small hosts, for he directed, for that purpose, the sexton to put the ciborium upon the altar, and when ascending to the altar he actually noticed it there. This intention formed directly before Holy Mass, continued virtually, as the celebrant in proof of the actual intention performed the ceremonies of Holy Mass. As the actual intention, formed before Holy Mass, virtually takes effect in the act of offering, and as the liturgical act of offering relates to the actual *materia* of the offering, as well as to the particles, it can hardly be said that the intention continues virtually in regard to the *materia primaria* but not also in regard to the present *materia superaddita, seu secundaria.*

Since therefore the conditions for validity are present, the ciborium appears to have been validly consecrated. Hence St. Alphonsus (n. 25) teaches, quite generally, without excepting our case; *non debet repetere consecrationem, qui minores hostias ad altare detulit, de quibus maiorem consecrans non explicite cogitavit nec*

detexit." Laymann also (L. V. Tr. IV. cp. II. n. 12) considers in this case the consecration valid, because both conditions *praesentia physica* and *intentio virtualis* are attendant. *"Si sacerdos, antequam ad sacrificandum egregiatur, de consecrandis hostiis in altare positis* (therefore not necessarily upon the corporal, because put there before Holy Mass) . . . *admoneatur easdemque consecrare proponat, postea vero omnino obliviscatur, censeri debent nihil omninus consecratae, cum in tali casu neque hostiarum praesentia neque sacerdotis intentio virtualis desideretur."*

The *Salmanticenses* hold (de Euch. cp. 4, n. 125), that the consecration is valid, if the priest has the hosts brought upon the altar but at the time of consecration forgot about them, and in proof they go on to say *"quia intentio virtualiter perseverat;"* without making any distinction as to whether the ciborium stood upon the corporal or beside it.

It is an instance of irregularity only that the ciborium was standing outside the corporal, there can be no question of sin, because knowledge and intention were lacking. And yet it is just this circumstance, which is claimed by some authorities to cancel the *intentio virtualis* otherwise present. These authorities admit under the circumstances of our case that the physical *materia* is present and also that the priest has virtually the intention, though the *materia superaddita* be forgotten at the consecration, and that consequently the consecration is valid, but only then, if the ciborium at the consecration stands upon the corporal; this they regard a *conditio sine qua non.* So Bucceroni (II. n. 511, 3): *"Valet consecratio, si quis ante sacrificium monitus fuerit de consecrandis hostiis iam super altari positis, etsi dum consecrat, earum non ita meminerit aut etiam ad oblationem non detexerit, modo sint praesentes in corporali, quia intentio praecedens virtualiter per-*

severat." These authors therefore make exception of the case, when the ciborium stands outside the corporal. But according to the *Salmanticenses* (de Euch. p. 4, n. 125), it is only *"nonnulli"* who make the exception: *"dummodo sint super corporali,"* and their reason for making the exception is *quia non est praesumendus sacerdos indebite et illicite consecrationem facere voluisse.* (Salm. l. c.)

So also Aversa (de Euch. g. z. Sect. 2) *non praesumitur sacerdos velle committere grave peccatum, quale esset ita consecrare.* Likewise Holzmann (II. tr. 3, cp. 2, art. 2) in his case holds that all six hosts present are consecrated even when the celebrant erroneously supposes that there are only five upon the following general principle: . . . *"sacerdos juxta ritum ecclesiae (sicut regulariter solet et debet, ita in casu particulari) censetur habere intentionem consecrandi totam materiam, quam habet praemanibus, aut quam tulit ad altare vel ipse vel alius de ipsius consensu, si sit licite consecrabilis."*

The argument advanced is therefore: one can not presume the *intentio consecrandi* in the priest if a circumstance exists, unknown to the celebrant, which, if known to him, would prevent him from consecrating, so as not to consecrate unlawfully.

But this argument does not seem able to stand the test, because in its application and in its consequences it leads too far.

It would certainly be grievously sinful to offer up the holy sacrifice in an unconsecrated chalice, or with a badly broken host, or in wine not mixed with water at the offertory, or in wine which has soured though still valid material. If now one of these unlawful conditions were present without the priest being aware of it, it would have to be assumed according to the general principle above mentioned that the consecration was invalid, *"quia non erat licite consecrabile, quia non praesumitur sacerdos velle committere grave*

peccatum." The advocates of the above-mentioned principle, however, admit the validity of the consecration in the cases named. Why, then, should the principle apply in a case when the ciborium is *extra corporale,* and not to the other forbidden conditions? That is not easy to understand. Such restriction would seem purely arbitrary.

Nevertheless Roncaglia (de Euch. p. 2, q. 8) seeks to solve the difficulty by discriminating between the actual sacrificial *materia* as *materia primaria,* and the particles to be consecrated as *materia secundaria seu superaddita;* the priest intends at any rate the essence of the sacrifice of the Mass, notwithstanding a present but unknown defect; has, however, the intention only to consecrate *modo licito* the particles present in the ciborium, as *materia secundaria,* which is well reconcilable, as the essence of the Mass exists in its integrity without the consecration of the particles added thereto. Hence, according to this opinion, the sacrifice of the Mass would be valid with a fermented or badly broken host, with an unconsecrated chalice, with sour wine, with wine unmixed with water; the consecration of the particles, on the contrary, would be invalid if the ciborium stood outside the corporal, if the extra hosts were of fermented bread, etc.

Even in this restriction to the secondary *materia* it does not appear as if the principle could be defended.

Not to uncover the ciborium at the consecration would, if it happened knowingly, be a grievous sin according to a few theologians, and this is a condition which concerns the particles, therefore, in this case, according to Roncaglia, the consecration would be invalid, at least in the opinion of those authors who regard the non-uncovering as grievously sinful. Yet in reality would even they doubt the validity of such a consecration? Furthermore, let us suppose that the hosts contained in the ciborium are fermented,

which is forbidden *sub gravi;* the priest, however, has placed the ciborium upon the corporal; in this case the validity of the consecration will generally be admitted, whether the priest forgets about the particles at the consecration and therefore has only virtual intention, or whether by the uncovering of the ciborium he manifests his actual intention; and yet it is here a question of the secondary *materia!*

Or let us presume the following cases, so as to return to the case *positio extra corporale,* the pyxis stands outside the corporal, which the priest does not notice, and at the consecration he removes the cover; or, the priest uncovering the pyxis moves it nearer, whereby its base slips under the edge of the corporal, so that the pyxis still remains outside the corporal; in these cases no one will doubt the validity of the consecration, though we have here the forbidden case *"extra corporale,"* and though it is here a question of secondary *materia!*

Both these last-mentioned cases are distinct from our case only by the fact that the priest in the former has actual intention, and in our case merely virtual intention.

This accidental distinction, however, does not actually matter, as both the actual and the virtual intention suffice for the validity; in the opinion of those authorities there would have to be added to both kinds of intentions: *sub intelligitur conditio, si sit licite consecrabile.*

If we sum up all these suppositions, we come to the following conclusion; either the principle mentioned must be allowed to apply in its full extent or not at all, a middle course does not seem possible; as however even the advocates of the principle do not let it govern universally, it seems as if this principle would have to be dropped as not tenable.

Hitherto we have viewed this principle *"non est praesumendus*

sacerdos illicite consecrationem facere velle," from the outside as it were, namely, in its application and in its consequences; if we now consider the same according to its nature and essence, it proves itself equally untenable.*

According to this principle the proof of the invalidity of the consecration in the case before us is taken *"ex praesumpta intentione celebrantis,"* meaning: one can not suppose that the celebrant has simply the intention to consecrate under all circumstances, whether forbidden conditions exist or not, but it is rather to be supposed that he has the intention not to do anything at Holy Mass that might be a grievous sin, therefore only to consecrate (at least the *materia secundaria*) when the permissibility is endangered by no weighty qualifications. It is presumed accordingly that the priest has in a manner an *intentio conditionata,* in so far as he either in every single consecration of the particles makes this condition, or that he once and for all resolves upon this general intention: I shall never intend to consecrate, if a condition exists which if realized would make the consecration gravely unlawful. If a priest really has this intention the consecration is, of course, invalid if such condition be present, because the original *intentio conditionata* by the entering of the contemplated condition becomes an *intentio absoluta.* Where however such intention is lacking, then it must be held *praesumpta illa voluntas nulla est.*

*In our argument we have pointed out that in regard to the transubstantiation of the Eucharistic species the discussed principle in its logical application leads too far, and left aside the fact that this principle would also be made to apply to the other Sacraments, of which it would likewise have to be held *"non praesumitur sacerdos velle committere grave peccatum."* It is easily seen of what grave consequences it might be if the priest, in administering the Sacraments, Holy Baptism, for instance, had always the intention to administer the Sacrament only if no condition be present which is forbidden *sub gravi.*

The question is, have priests really, as a general thing, the conditional intention only to consecrate, *si sit licite consecrabile*? It would appear that hardly any priests make this general condition beforehand nor regularly in each single case, as otherwise the hesitation and the doubt about validity or invalidity of the consecration, as soon as after the consecration an impeding condition is discovered, would be utterly inexplicable, for of course if they had really had this conditional intention, they would be aware of it, and there could be no doubt that the consecration was invalid.

The reason why hardly any one has this conditional intention, is, because under these circumstances the non-observance of a prescribed form will be no sin, as in all these cases *ignorantia* is presupposed. Besides, one might be placed in considerable embarrassment by this conditional intention, if, for instance, no consecrated particles are at hand, when needed for the Communion of the faithful. It seems, however, that a distinction must be made as to whether it is a question of consecrating a few particles upon the paten, or whether the priest intends to consecrate a larger quantity in the ciborium. In the first case, the priest has the tacit intention only to consecrate what there is contained upon the corporal, and for that reason the celebrant may properly consider as not consecrated, any particles found outside the corporal after the consecration. In the second case the priest has not the intention to consecrate only that which is lying on the corporal, when perhaps inadvertently he has let the ciborium stand outside the corporal. This distinction is evident by the nature of the proceeding, because the single particles are placed, from the beginning, upon the paten and therefore upon the corporal, while, on the contrary, the ciborium stands in the beginning outside the corporal, and only during the Holy Mass is placed upon it.

It may be gathered from the above that the principle referred to is

hardly admissible and that much rather the following general tenet may be adhered to: It can not be held that a priest has not the intention to consecrate, when, without his knowledge, a condition, *not* interfering with the essence of the Sacrament, is present, which if knowingly tolerated would be a grievous sin. The universal practice of the Church supports this tenet, because whenever the valid administration of a Sacrament is questioned, inquiry is always made whether the *substantial* elements are present, but not whether also the accidental elements were observed, even if *sub gravi* prescribed.

This terminates our speculative discussion, and the result is that the validity of the consecration under the conditions mentioned is far more probable than its invalidity.*

The important question now demands our attention: What principle is to guide us in practice? Although the authorities differ in the *theoretical* explanation, yet they agree in their view of the actual instance, that the particles are to be again consecrated *conditionally,* as the validity of the consecration is not quite certain; it does not, however, follow that our speculative discussion is superfluous, for it brings about a more profound understanding of the matter, and sheds a bright light upon obscure points. While St. Alphonsus designates the verdict of the invalidity of the consecration as *communis,* the Salmenticenses as we have seen above declare that it is only *nonnulli* who argue the invalidity. Since, therefore, the matter is not decided we may be guided in practice by

*Lehmkuhl considers as more probable in our case the invalidity of the consecration because he holds that the priest's intention before the sacrifice of the Mass had probably been only "PROPOSITUM *particulas assumendi et in consecratione includendi.*" This verdict was not touched upon in the above discussion, for the reason that our purpose was chiefly to refute the argument *ex praesumpta intentione celebrantis.*

P. Lehmkuhl who writes: "*Si igitur dubia manet consecratio, particulae aut* IN SEQUENTI MISSA SUB CONDITIONE ITERUM *consecrandae sunt aut—id quod nisi aliunde incommodum oriatur, maioris reverentiae causa praeferendum videtur—post sumptionem sacri calicis ante ablutionem a sacerdote celebrante consumi debent.*" The latter, of course, is possible only when there are very few particles. St. Alphonsus also advises that since the matter in the practice remains always *res dubia,* it is reasonable to agree with what Pope Benedict XIV teaches, namely, that this ciborium should again be consecrated.

From the above we may now review the priest's action in the present case. He did not do well in repeating the consecration conditionally during THE SAME MASS, for as the actual matter of sacrifice has already been consecrated this repetition of the consecration was equal to a *consecratio sub una specie,* which is never permitted, not even if the Viaticum were called for by a dying person. The celebrant should therefore have reserved the ciborium for another Mass, and the faithful should have been directed to come to Holy Communion upon the following day.

II. On account of its similarity we will quote briefly a second case which, no doubt, has happened to many a priest: A priest orders the sexton, before Mass, to put the ciborium containing the hosts upon the altar, in order to be consecrated. At the commencement of Holy Mass the celebrant places the ciborium upon the corporal, beside the chalice, but during Mass he entirely forgets about it; he does not uncover it at the consecration, hence at the end of Mass he takes it for granted that the ciborium has not been consecrated; he has it carried back into the sacristy, in order to consecrate it the following day.

The solution of this case is plain from our argument in the first

case. According to St. Alphonsus (n. 217) it is *sententia communis,* that the consecration is valid if the ciborium stands upon the corporal even if at the consecration it is entirely overlooked. In reality all the requisites for its validity are present, namely the *praesentia physica,* and, moreover, the *intentio virtualis,* which the priest manifests sufficiently by having the ciborium brought to the altar, and by his placing it upon the corporal. There was, of course, an omission of a circumstance prescribed by the rubrics, namely, the ciborium was not uncovered, still the non-observance of this accidental circumstance does not interfere at all with the validity of the consecration; in the first place, moralists admit almost universally that it is not decreed *sub gravi* to uncover the ciborium and, secondly, even supposed it be an *obligatio gravis,* its wilful omission therefore a grievous sin, yet this would not prejudice the validity, because the principle *non praesumitur sacerdos velle committere grave peccatum,* has according to our examination no weight. Hence it follows that in this second case the priest could have distributed these particles to the faithful in Holy Communion, without any doubt or hesitation.

LXVII. MARRIAGE BY PRIEST WITHOUT BANNS AND CONFESSION.*

Elvira, after a lapse of ten years since her last Confession, appeared in the confessional. In the interval she had been seduced by Alexis, and become a mother, had been civilly married to him, and borne him three children. Both husband and wife are highly esteemed by the community, and no one knows of their merely civil marriage. Father Titus refuses absolution until Elvira shall bring her husband to have their marriage performed by a priest. Next day she appears with Alexis. The priest questions them in regard to possible impediments and finds that there exist none. He can not, however, induce Alexis, who agrees to the church ceremony for Elvira's sake, to go to Confession, he declares that sooner than to do so, he would do without the church ceremony. Thereupon Father Titus decides to make use of his authority to marry persons living in concubinage, without previous publication of banns; he hears Elvira's Confession, gives her absolution and then joins the parties in marriage before two witnesses. Did he do right?

Solution. Titus was quite correct; it would have been wrong to have acted otherwise.

The reasons for this decision are obvious. Of course the pastor is obliged to exclude as far as possible the unworthy from participating in the Sacraments. Matrimony being a Sacrament of the living, requires a state of grace; no one therefore can approach it, without having been previously purified from such grievous sins as he may have committed. Even if this can take place by an act of perfect contrition, yet the pastor ought to insist upon a good Confession, and the priestly absolution before marriage. But in

*By A. Lehmkuhl, S.J.

matrimony the priest is not dispenser; he is only an authoritative witness. To prevent its unworthy reception he is under obligation only in so far as his is the duty of direction and furthermore the duty to avoid becoming accessory to sin. This duty is, however, superseded when weighty reasons are opposed to it.

In our case there are the weightiest reasons why lawful marriage between Alexis and Elvira should take place, especially considering Elvira, who earnestly desires to be reconciled to God and who is anxious to have her relation to Alexis put in proper order. She is for her own sake, and for the sake of her children, entitled to a lawful marriage ceremony; without such she would be compelled to leave Alexis, to throw herself penniless upon the world, and to see her children dishonored; or else she would remain in the near occasion of sinning. If, therefore, Alexis consents to the church ceremony, to make their marriage lawful, but without being reconciled with God, therefore on his part sacrilegious, the pastor, as well as Elvira, has sufficient reason not to refuse on his part the necessary material coöperation; indeed the pastor is bound to lend his priestly assistance in the marriage, if he otherwise fails to find any impediment. This question is in a detailed and thorough manner in Lugo's *De Sacramentis in Genere, disp.* 8 (*sect.* 13 and 14).

The Code in Canon 1033 rules that the pastor should forcefully exhort the parties to make a good confession and to receive Holy Communion before marriage. When the pastor has done so and the parties refuse to heed his exhortation, he must assist at the marriage and leave the rest to God.

LXVIII. THE NEAR OCCASION WITH RELATION TO COMPANY-KEEPING.*

Titius, a young single lad, has intimate relations with Ursula, a young unmarried person. He has repeatedly at night visited and sinned with her. There is no prospect of marriage. He has promised his confessor time and again to cease this sinful attachment. Coming to Confession again he tells Father Lucas, his confessor, that he has not sinned with Ursula since his last Confession, although he has several times visited her in her room at night. He gives positive assurance that no further impropriety will take place and asks may he not associate with the person as with a sister?

Father Lucas inquires: "Did you not have temptations during those nocturnal visits?" Titius: "I did have very strong temptation, but I would not consent!" Father Lucas: "Is there no possibility of your marrying one another?" Titius replies in the negative, and mentions he does at any rate not care to marry. Father Lucas then directs him to give up the acquaintance with that person, it being the near occasion of sin for Titius as well as for Ursula.

Titius after some argument finally agrees to give up the person, but insists that he must visit her just once more at night in order to take leave of her, and also because he has many things to tell her, and that she has articles belonging to him which he wants to recover. Father Lucas asks: "What good reason is there to visit her only at night-time? Why not by day?" Titius: "It would not do by day, because we should get a bad reputation if seen together. Then, too, I can not arrange matters within the few minutes that I could be with her in day-time." Father Lucas then allows this last visit provided Titius gives his word of honor that this shall be the

*By I. J. Braun.

last visit, that he will make it as brief as possible, and that he will take utmost care not to let anything improper happen. Titius promises all this faithfully and parts with the absolution.

Quaeritur. 1. Was Father Lucas obliged to demand that Titius give up his relations with this person?

2. What is to be held in general of courtships and company-keeping? When are they allowed, when forbidden?

3. Was Father Lucas correct to allow to Titius the taking leave of Ursula in her room alone and at night?

Answer. 1. Father Lucas was strictly bound in conscience to forbid to Titius his nocturnal visiting with the person; for what good purpose can there be in a courtship with no prospect of marriage? Even if Titius for a brief period, since his last Confession, has not had improper relations with the person, it is obvious that due to his passionate and sinful affection for the person, he will fall again into sin, and that then the last state will be worse than the first. No one may expose himself voluntarily to the near occasion without necessity or important reasons. The visits at night to the person were in themselves grievously sinful because without necessity and reason.

Courtship and company-keeping can not be condemned at random; young people must have an opportunity to become acquainted before they become linked together for life.

Courtship and company-keeping is, however, permissible only where there is the intention and the possibility of ultimate marriage. Where one or both of these is lacking, such relation must not be tolerated. In other words the one starting or indulging in a courtship must have the will and the ability to marry the courted person.

The so-called company-keeping (*amores, procationes*) between persons of opposite sex is in itself not immoral, provided that there

exists between such *amantes* a proper and sincere intention, and a not too remote prospect of marrying, and provided further the relation, the *vicaria relatio,* appears to be free of impropriety, *tam peccata carnis, quam occasionem proximam talium peccatorum excludens.*

In fact, in case of contemplated marriage, a previous consociation is judicious, and even necessary, because the young people should get knowledge of each other so as to convince themselves that they can respect and love each other. Göpfert in his Moral Theology writes:

"What is to be thought in general of acquaintanceships, continued association, visits, etc., between young persons of opposite sex? It can not be said that they are in themselves grievously sinful, but as a rule they are hardly anything else but the near occasion of grievous sin. Three conditions may be named under which they may be permitted, namely, that they should be begun for a good purpose, that the intercourse must take place within proper bounds, and that the necessary precautions be employed.

1. They must be begun with a good purpose, in other words, with the intention to contract marriage soon, i. e., within a relatively short time, to be determined by reasonable judgment and according to the usage of conscientious persons. Owing to the danger of mixed marriages, inquiries should be made as to whether the other party is of the Catholic faith, and if not the person should be seriously warned against further intercourse and against a marriage promise.

2. Intercourse shall take place only within proper bounds, i. e., not too frequent and not too long visits. A greater frequency may be allowed if the wedding is to take place in a short while, say in a month or two; a lesser, the farther off the wedding seems to be. A greater frequency may be tolerated if the young girl is never left alone with the young man, but always under vigilant care; a lesser,

when the young people are usually left alone, or when the girl is not under the care of parents or relatives who watch over her.

3. At these visits the necessary precautions must be taken: The young people must not be in each other's company without the parents' knowledge, and not without their silent or expressed approval; as far as possible not be left alone, and they must fortify themselves against temptation by spiritual means.

Where these three conditions obtain, such relations and courtships are not unlawful, even if a grave danger were present, because they are morally necessary conditions, for to demand that one should marry a comparatively unknown person would be unreasonable, and if one would not admit this reason the confessor would accomplish nothing else than that the young couple would now *ex mala fide* surely sin. For these reasons such visits may not be forbidden even if the parties fall into sin on account of them. The confessor will in such cases accomplish more, if he seeks by appropriate means to make the occasion a remote one; if he, for instance, advises that they never be left alone, that some one be always present, even if only a little boy or girl; in their presence grievous exterior sins could not (easily) take place; excessive marks of affection will not easily occur; he will counsel them to restrict demonstrations of affection in their frequency, duration and manner. If he does not improve matters then these people may be considered as *in occasione proxima moraliter necessaria absente,* and relapsing continually into this same sin. It is to be considered which is more promising, to demand that the couple employ other and more effective means or that they omit entirely their visits, marks of affection, etc., and this is to be imposed upon them in Confession."

Göpfert has gathered in these directions nearly everything of moment that is to be found in the various standard authors about

the lawfulness of courtships, etc. Difficult, yet incalculably important for the priest, is the question: When are courtships prohibited?

Let us quote here, first of all, from the writings of Blessed Leonard of Port Maurice, who teaches on this subject: "It seems that much less severity and more indulgence is indicated in the occasions that are not *in esse,* as: visits to gambling-houses and places of amusement, of gatherings and inns, *love affairs,* etc., for according to the instructions of St. Charles, if the penitent promises to give them up, and if this promise comes from the heart, one may give absolution at least twice or three times, but only in the supposition that the confessor perceives such promise proceeds from a sincere and contrite heart. If the penitent has often before promised reform and has not amended his conduct then the saintly archbishop instructs that absolution be refused until the near occasion has been avoided.

Among those occasions that are not *in esse,* there should be placed in the front ranks, in my opinion, the amorous alliances, which in our days are a stumbling-block for the young. Some are unwilling that there should be such an outcry against this unholy love, because they fear to disseminate wickedness where there is none, or that one might represent as a sin that which in reality is not a sin. They claim that the soul is given thus a false conscience and a false shame, and that it will plunge from sin to sin, at last unavoidably into sacrilege. But alas! the delusion of those perhaps unaware of the true license and wickedness of our days.

I do not deny indeed that it may happen to an imprudent confessor who has asked an innocent girl whether she has a love affair and upon her admission, that he has been too strict with her, without first examining as to the nature of her affection. But this is a very rare case, which strictly speaking does not merit so much consideration. That which causes tears to the servant of God is the spectacle, that

in our days depravity has burst its barriers, and overflowed in every direction, sweeping away with it the youth of the tenderest age. Alas, they say in sadness, why censure the few at their excess of zeal, and then be silent, even palliating the forbearance of so many others, who blindly absolve all those enamored who in their love affairs commit sins of all kinds?

It would be wrong to conclude that to be in love is always a sin, but it would be still worse to suppose that it is always innocent. If one is to judge relatively, and according to the things which generally happen, it would be regarded as an incontestable proposition that love-making as it exists in these days is mostly a near occasion of sin. Would to God that this view was not proved by long and sad experience!

It is true that now and then the love of young persons is innocent in the beginning, but it turns evil as it progresses. They begin looking upon one another with pleasure, and affection turns gradually into passion, and passion plunges them into the abyss without bottom. Now give me your attention and answer me this question: Are we physicians of the soul? And if so, how can we tolerate such a baneful abuse, which infects the world by so many marriages consummated in darkness, with so many murders, with so much debauchery, with hatred, scandal and crimes of all kinds? For this reason there must be among us a firm determination to knit the sacred bond more firmly than ever, and *to be uniform* in postponing and even in refusing absolution to those who, found guilty, will not promise to give up their frivolous love affairs. In order to discover positively whether love affairs are innocent or sinful, one has only to ask questions and small indeed will be the number of those where no disgraceful circumstance insinuated itself on part of either one or other, which renders such an abominable courtship absolutely

unlawful. In order, however, that you may have an example before you, that will render you cautious in questioning as well as firm in refusing absolution, when this be necessary, I will here repeat word for word, what the learned and devout Cardinal Pikus of Mirandola, Bishop of Albano, wrote in a pastoral letter which deserves to be read by every confessor: His words are:

"We exhort all confessors not to absolve those who live in love affairs, if such are grievous and unlawful and if, after a third warning from their confessors, they actually have not reformed. Give them to understand that if they do not amend, they must not expect to be absolved by you, neither can they ask this of any other confessors.

The general cases in which love affairs may be regarded as absolutely unlawful, we now add here briefly, and for good reasons in Latin, so that on this point, as it should be in all others, your proceeding may be uniform.

I. Quandocumque ita fiat, etiam inter pares, et causa matrimonii ut intercedant oscula, vel tactus, vel amplexus, vel delectationes morosae, aut periculum labendi in quodvis grave peccatum.

II. Quando fit inter eos, qui sunt disparis conditionis propter scandalum et periculum mortaliter peccandi.

III. Si fiat cum illis, cum quibus impossibile est contrahi matrimonium, ut sunt uxorati, claustrales et in sacris ordinibus constituti, tum quia non potest cohonestari talis amor fine matrimonii, tum quia intercedit scandalum et periculum labendi in culpas lethales.

IV. Si fiat in ecclesia, tum propter irreverentiam, tum propter periculum audiendi sacrum sine debita attentione, tum etiam propter scandalum.

V. Si adsit praeceptum patris vel matris aut tutoris rationabiliter prohibens talem amorem, quia etiamsi reliqua sint honesta, filii fam-

ilias et pupilli tenentur in re gravi, ut sine dubia haec est, obedire parentibus vel tutoribus sub poena peccati mortalis.

VI. Quando clam fit et occulte, tum quia est expositus gravibus periculis et occasioni proximae graviter peccandi, tum quia quando ita fit regulariter exercetur contra voluntatem parentum vel tutorum, quibus filii et pupilli obedire debent.

VII. Si tempore nocturno fiat propter scandalum et periculum peccandi, etc.

VIII. Si fiat sub praetextu honestatae recreationis et relaxandi animum, quia semper urget periculum et occasio proxima labendi ex longa mora, in qua habentur colloquia, mutui aspectus, protestatio amoris, etc.

IX. Si eo modo fiat, ut ex se involvat periculum proximum osculorum, tactuum, etc., etiamsi aliunde ille amor esset licite exercitus, quia est inter solutos et causa matrimonii; si, v. g. domi admittatur amasius, vel ita approximetur ut nemo non videat, adesse occasionem proximam tactuum, etc.

X. Si amator vel amatrix animadvertat, complicem amoris esse graviter tentatum, vel alterum urgere verbis turpibus, vel alio modo ad inhonesta, etc., etiamsi alter complex nihil tentetur et nullam sentiat inclinationem ad peccandum; in quo casu erit utrique illicitus amor ille propter periculum proximum delectationis et scandali activi in uno, et passivi in altero, in quo graviter laedetur charitas erga proximum.

XI. Denique universaliter loquendo, quoties cumque ob causam amoris amator vel amatrix frequenter labitur in aliquam gravem noxam; tunc amor induit rationem occasionis proximae mali et est omnino illicitus.

All these instances should be well considered and penitents who are dominated by the passions should be carefully questioned, using

due precaution; then I should like to ask whether the above-mentioned proposition is not incontestable, namely, that the love affairs in our day are, for the greater part, the near occasion of sin. And if this is so, how should not that penitent be warned who has been frequently exhorted and yet will not amend; who perhaps even quarrels with the confessor and expects to compel absolution from him?

I summon before God's tribunal all those confessors who seek renown from dangerous complaisance by absolving all without reflection! They are the ruin of youth, indeed, of the world, for a badly brought-up youth is the formation of all evils and of all family disorders." (Instructions for Confessors by L. of P. Maurizio.)

Any one with experience in the confessional knows how true and important these words of Blessed Leonard are for every confessor.

Göpfert in the book quoted above, writes briefly and admirably about this kind of love affairs as follows: When the parties in question do not intend marriage, or if they, on account of circumstances, will never be able to get married, or if only after a long time (this must be left to the prudent judgment of the confessor), then the keeping of such company is *occasio proxima voluntaria absens* (*non in esse*) and if the parties have been warned a few times by their confessors, without result, then they are not to be absolved until they obey. This is to be enforced so much more strictly if they have been sinning grievously one with another, or if their conduct has given scandal. In this regard the parents, too, especially the mothers, should be earnestly exhorted in Confession, so that they will not permit their daughters to be absent from the house at evening and night, to associate with young fellows, in which case sin is often not far off. This strict proceeding is all the more necessary if such acquaintances were already begun with no good intentions. It is sinful

to accept presents, given with the purpose to start an illicit love affair, even if the recipient fosters no wrong intention, unless explicit protest is made against any bad purpose, for by accepting the present an impure hope is created in the giver, which imperils the receiver. Indeed, such persons should be induced, in order to avoid all danger for the future, either to return the presents thus received, to destroy them, or to distribute them among the poor (Reuter, Neoconf. n. 113; Lehmkuhl I. 645; S. Alf. I. 6 n. 854).

Ad 2. (After the above discussion the solving of the second question is not difficult.) Was Father Lucas correct in allowing Titius to go and take leave of Ursula, in her room alone and at night? We have learned that Titius declares himself willing to give up his sinful relations on the condition that he may go and say goodbye. He gives as reason that he has much to discuss with her and that he must recover some articles of his. He chooses the night-time that people shall not talk about him. None of these reasons are valid, because whatever he has to tell her he can do by writing, and the articles belonging to him can be sent to him either through the mail, or by some trustworthy person. Why should there be a leave-taking, when there must never be another meeting between them? When saying goodbye people are likely to become wrought up. The passion, strong enough to have caused them to sin, would be powerfully aroused, and instead of a parting there may very likely be the beginning of a new life of sin; at the very least there would be grievous sinning more than probable, and this would be favored by the time, the place, and the circumstances (*solus cum sola ultimo*). It would really be a miracle if no sin would be committed. God protects only those who venture into danger through necessity. Titius is frail. He has been unsuccessful in combating temptations. Will he not almost certainly be overcome again? Will the tempter

or temptress not whisper to him, Just once more, it is the last time! Consequently Father Lucas had no right to allow Titius this nocturnal farewell visit.

In conclusion let us say that it may puzzle some why such a delicate subject was chosen by us for discussion. It was done, because so many confessors are on this point guided by an incomprehensible laxity, they absolve everything that comes their way. The priest at his ordination receives not only the power to remit sins, but to retain them likewise. When a confessor, however, *quoad sextum,* cherishes the axiom: "These are sins of weakness, they can not be helped. It always has been, and always will be so," we will answer, To be sure the individual is powerless to turn this turbid tide, but if all work together this tide will be kept within bounds so that it may not overflow and cause disaster. After all, where must the responsibility for the shocking increase in frivolity among our people be placed if not on the laxness of confessors? Would that all confessors acted according to the principles of Blessed Leonard of Port Maurice, written down in his admirable "Instructions for Confessors."

The souls who through the fault of lax confessors lived on for years in the gravest sins, who died in them and went to perdition, will cry to God for vengeance. Let us apply fire and iron there, as Blessed Leonard advises, where on the above point gentle advice and earnest exhortations are fruitless. Only by concerted action of our confessors can the trend of immorality of our time be successfully checked, at least among our own people.

LXIX. ABSOLUTION FROM THE EXCOMMUNICATION INCURRED BY MASONS.*

Adolphus joined the Masons because he felt that their favor would be helpful to him in his business. For years he was successful. Then his only son, a good Catholic, fell ill. At the point of death he begged his father to look to his soul. The son died. Adolphus was stunned into a sense of his condition. He realized his plight, cut off, as he was, from the sacraments, and powerless to offer help for his son's soul. Overwhelmed with sorrow, he went to Fr. Fabius, and begged for absolution immediately. He professed himself willing to do whatever was required of him for his reinstatement. Fr. Fabius, feeling that it would take days for a communication to come from the Apostolic Delegation, absolves him and tells him to return in a week. Meanwhile he applies to the Delegate and gets instructions from him. On Adolphus' return, the instructions are carried out and the penitent is bidden worry no further.

Questions. 1. Are members of Masonic societies excommunicated? 2. Can a confessor without special faculties absolve from censure in an urgent case? 3. Was Fabius right?

Answer.—*Ad* 1. Canon 2335 reads: "Those enrolling themselves as members of the Masonic sect or of other associations of the same type that plot against (*machinantur*) the Church or legitimate civil authority, incur by that fact, excommunication simply reserved to the Holy See." There are a few points about this penalty that cali for remark. It is understood that a man must knowingly and willingly have his name inscribed on the rolls of the organization as

*By Gerald Murray, C.SS.R.

a member. Is there a distinction made between Masonic sects and other organizations, so that the qualifying clause: *"quae machinantur contra ecclesiam,"* etc., would apply to the latter and not to the former? We think not. No society is censured that is not opposed to Church or State; no member falls under the censure unless he knows of that opposition, whether it be secret or avowed. The Holy Office, on May 10, 1884, was careful in marking the difference between societies forbidden with or without censure. It made it clear that, whether the plotting was in the open or not, whether an oath-bound secrecy were required or not, an association scheming against Church or State was banned under censure. Of late, some have insisted on dissociating Masonry in English-speaking countries from the Continental variety. There seems to be no justification for the attempt to save the former from the Church's condemnation.

Ad 2. Wide powers are granted by law to the ordinary confessor for urgent cases. An urgent case is one in which there is danger of gave scandal or loss of reputation, or where delay in obtaining absolution would be a real hardship for the penitent anxious to recover God's grace. In this latter circumstance, a great deal depends on the penitent's realization of what it means to be in mortal sin. Should this appreciation be keen, even a day's delay would be a considerable trial. Should it be impossible, within that time, to reach the competent superior and receive his reply, the case would be an urgent one in the sense of the law. The confessor, then, who has no special faculties may, in such a case, absolve from all censures *latae sententiae,* no matter how or to whom reserved. However, he is bound, usually, to impose upon the penitent the obligation of recurring, if not personally, then at least by letter through the confessor, and under an assumed name, to the Sacred Penitentiary, to the bishop or to any other superior who has the

requisite faculties. The penitent is to be told, that, should he fail, through serious fault on his part, to apply within a month to the lawful superior for the necessary instructions by which he is to abide, he will fall back under the ban from which he has just been released (Canon 2254, par. 1).

There are two cases, however, where this recourse may be dispensed with. After accepting the obligation of applying or after actually applying, within the month, to the superior, should the penitent wish to go to a confessor who happens to have faculties, he is free to do so. The penitent must tell the sin for which the censure was contracted. The confessor, then, without concerning himself about what has been done or promised, may handle the whole matter. The penitent is to do what is enjoined in this confession, and the affair is considered definitely closed. No further obligation exists. The penitent is not bound to write to the superior, if he has not previously done so. If the petition has already been forwarded, he need take no notice of the reply (Can. 2254, par. 2).

A further exception is made in favor of the penitent. If it is really morally impossible, in an extraordinary case, to apply to the ecclesiastical superior for instructions then, outside the one case mentioned in Canon 2367, the confessor may deal unaided with the whole matter. In such a case, he imposes the obligations enjoined by either the natural or the ecclesiastical law or both, and gives the penance. A definite time within which the penance has to be performed and reparation made is set. Failure, through the penitent's serious fault, to live up to this requirement entails falling back into the censure (Canon 2254, par. 3). The condition covered by this provision of the law might occur on a mission. If the penitent is incapable of writing to the ecclesiastical superior, and the confessor, who is to leave in a few days, will be unable to

communicate with him, recourse is to be considered morally impossible. In the same way, a penitent from another diocese might, on the eve of his departure from the place he has been visiting, go to confession. It may really be hard for priest and penitent to get in touch with one another again. The exception to Canon 2254, par. 1, may be availed of.

Ad 3. Fabius was right. The case was an urgent one, and he was perfectly justified in taking advantage of the provision of Canon 2254, par. 1. Under normal conditions; *i. e.*, outside of a case of moral impossibility, recourse to a superior with faculties is required. The censure in question is one simply reserved to the Holy See. The bishop has by law faculties to absolve from it, but only in occult cases. For a public case, unless special powers were in the hands of the bishop, recourse would have to be had to Rome, or to the Apostolic Delegate who has faculties to absolve from all censures reserved by law to the Holy See, whether occult or public, those very specially reserved being alone excepted (*Monitore Ecclesiastico,* May, 1920, p. 137). The *pagella poenitentiaria,* given to some confessors, contains this faculty too. Certain conditions are always demanded of the penitent when he seeks absolution from this censure. He must give up his affiliation with the association or sect and abjure it. He must hand over for transmission to the Ordinary, or at least, if just and grave reasons exist against that course, destroy all books, manuscripts, symbols and other paraphernalia. He must accept a salutary penance in keeping with the gravity of his fault, preferably the frequenting of the sacraments, and he must be made to attempt the repairing of any scandal he may have given. These are the instructions contained in the grant of the power to absolve from excommunication those who have been members of Masonic societies.

LXX. COOPERATION IN FALSE WORSHIP.*

Father A is parish priest of a small town where there exists practically no prejudice against Catholics. This condition is due mainly to the pastor's friendliness to non-Catholics, a good trait, but one which has led him into indiscretions that have begun to bother his conscience, which he now manifests to Father B, stating that (*a*) he has given regularly to non-Catholic collectors, never asking whether the money was to be used for church or for charitable purposes; (*b*) he has been a regular contributor towards the salary of the colored Baptist preacher, whose poverty has stirred his pity; (*c*) lately, on request, he has given some hosts to the ritualistic Anglican rector for the celebration of "mass" and the giving of "communion." Father B states emphatically that Father A's attitude of mind toward non-Catholics is wholly wrong, and that it has led him into material and sinful coöperation *ad ritus falsos.*

Questions: (1) What are the general principles governing cooperation in evil? (2) What is their bearing on false worship? (3) What is to be said of Father A's actions and attitude?

Answer.—*Ad* 1. Not taking into consideration that kind of cooperation that springs from scandal, inducement or connivance, coöperation in evil is the aiding of another, already determined to sin, in the act of sin. Such coöperation is formal, if the coöperator concurs in both evil intention and evil action, as in the case of a servant giving the keys of his master's house to a thief with the express purpose of aiding the theft, material, if the coöperator concurs only in the evil action, as in the case of the servant who

*By James F. Newcomb, J.C.D.

surrenders the keys of his master's house to save his own life. Coöperation can be *immediate* or *mediate*, the latter being concurrence in acts that precede or follow the evil, the former, concurrence in the evil act. He coöperates immediately who helps a thief carry his booty, mediately, who opens a door to allow a thief to enter or leave. According to the measure of concurrence, mediate coöperation can be more or less remote, so that he who loans a ladder to a thief coöperates more remotely thas he who holds the ladder while the thief is ascending to commit theft.

Formal coöperation in evil is sinful in itself, and, of course, never lawful. *Per se* material coöperation is unlawful, but *per accidens* can be permitted. To be licit the act of the coöperator must be (*a*) either good or indifferent in itself, and (*b*) placed on account of a cause grave in proportion to the evil committed, the proximity of the coöperation, the necessity of the coöperation and the obligation of preventing the evil; so that graver cause would be necessary to permit coöperation in murder than in theft, in the holding of a ladder for a thief than in loaning it, in burglary needing coöperation than in burglary that does not need coöperation. Likewise, coöperation would be more easily excusable in laymen and non-officials than in priests and guardians of the law.

Moralists agree that any kind of coöperation that is detrimental to Church or State is never licit. As to the licitness of immediate, material coöperation there is a difference of opinion, some restricting its lawfulness to coöperation in certain sins against justice (Noldin II. n. 118), others extending it to those acts where the material coöperator can act without at least implicitly intending the malice of the act (Tanquérey I. n. 186). Ordinarily, in the opinion of all theologians, immediate, material coöperation is intrinsically evil (Genicot I. nn. 235, 535; Marc I. n. 517; Noldin II. nn. 116-119; Tanquérey I. nn. 183-197, etc.).

Ad 2. These principles have the same bearing on false worship that they have on any other sin, for false worship, that is, worship other than that of the Catholic Church, whether its inspiration be paganism, Judaism, Mohammedanism, heresy or schism, is materially sinful for all, and formally sinful for those not in good faith. Therefore, coöperation in false worship, from the most remote, such as the act of labor in cutting stone for a pagan temple, to the most proximate, such as the actual *"participatio in sacris,"* is sinful, according to the measure of concurrence and of necessity.

To apply the principles of coöperation in evil to false worship, it is never lawful to coöperate formally in false worship; for such coöperation would be intrinsically evil and, of course, a grievous sin against faith. Non-Catholics, who are always looking for weakening of attitude on the part of the Church in this matter, can be referred with profit to C. I. C., 1258, and to the *Acta Sanctæ Sedis,* xi, pp. 309, sq., and 317. Further, it is never lawful to coöperate in false worship, although only materially, to the detriment of the Church; for that would be intrinsically evil, possibly considered *in contemptum fidei.* It is never lawful to coöperate materially and immediately, unless the cause be the gravest, the fear of the serious consequences of non-coöperation grave, and the non-assent to the tenets of the false worship be evident. Such a case might occur in pagan countries, where tribute is exacted from all, pagans and Christians, for pagan festivals which have a religious character (vide *Res. S. Off.,* April 21, 1847, in *Coll.* 1751).

Ad 3. (a) Father A must be discriminate in giving money to non-Catholic collectors. If he continues to donate to non-Catholic charities, provided he is sure that he does not cause scandal and that his donations will not be used to pervert Catholics, there may be no great harm done, especially since the end of non-Catholic charitable organizations is usually not primarily religious, but social, civic or

philanthropic, so that giving money to them can hardly be called immediate, material coöperation in false worship. In many parts of America, Catholics and non-Catholics count on each other's help, and, if Catholics ceased to give, a sudden reaction would be noticed. Father A's direct gift to non-Catholic churches would be inexcusable, however, for that would be immediate, material and proximate coöperation, without a sufficient cause (Lehmkuhl, I, n. 660).

(*b*) Donating towards the salary of the colored preacher is likewise material, immediate and proximate coöperation without excusing cause, and must scandalize even the preacher, if he knows anything of Catholic principles. If Father A's heart is bleeding for the poor preacher, he might give him some work to do and then pay him for that, but not for his preaching.

(*c*) If moralists hold that even the sale of articles for use in non-Catholic worship demands good cause to be licit, and if they demand graver cause by how much the more necessary to non-Catholic worship the article is, *a fortiori,* the gravest of reasons would hardly excuse from sinfulness the giving of hosts by a Catholic priest to a Protestant preacher, especially if he knew that they were to be used in the Anglican "mass." No reason imaginable would make licit such an act. Father A might make his friendship for the rector serve as a reason, but it would have been a greater act of friendship had he enlightened the rector on the reason for the impossibility of granting his request.

LXXI. AN INVALID ABSOLUTION.*

Mr. N. was dangerously sick; he would not listen to admonitions to make his peace with God, and refused to see the priest. N.'s wife and the priest frequently took counsel together as to how it would be possible to bring about N.'s reconciliation with God, even in spite of his resistance. Finally the pastor resolved upon the following proceeding: He secretly took up his position in an adjoining room, only a few feet, therefore, from the patient's bed—then the wife went to the sick man, purposely leaving the door ajar, so that the priest in the front room could hear and understand everything, whereupon she started an intimate conversation with her husband, apparently with the purpose of entertaining the patient, but in reality to draw from him an open acknowledgment of his sins, and to incite in him sincere contrition. Being a clever woman she began by speaking of one subject or another, then in particular about how good he had been to her in every respect; then about the religious practices in which for a long time he had joined her; of course there had been, too, some dark hours, as for instance, the discord which had been caused some years ago *in puncto religionis;* his constant neglect of this and that duty; then in order to obtain a "confession of sins," after this "examination of conscience," she asked gently whether he remembered so and so, whereupon naturally the answer was a long-drawn "Yes, that is right," or, "I must admit that," etc. Then she told the sick man how painful all this had been and still was for her, all the more so, as she could not banish the awful thought and harrowing fear, that he, her well-beloved husband, would lose heaven and go to eternal perdition on account of these sins, and that an awful fate

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would await him after death unless he was heartily sorry for them. By these and similar representations the good wife endeavored to awaken sincere contrition in the sick man, but she never said a word about the reception of the Sacrament of Penance, so as not to counteract the good disposition of her husband by arousing in him anew his antipathy against the religious act. The priest, who had heard and understood everything distinctly, believed that he might under the circumstances be satisfied with this *confessio dolorosa,* and gave priestly absolution to the sick man unobserved and unknown by the latter. The priest confidently hoped in this manner to have saved the sick man's soul. The question is asked whether this absolution was valid or not? To this we must answer a decided *No,* for the reason that the penitent did not have the necessary intention to Sacramental absolution, and because the *materia proxima Sacramenti* was altogether absent.

1. The absolution in question is invalid because the penitent did not have the necessary intention to receive the Sacrament.

God gave to man reason and free will, and willed that no adult, i. e., no one who has attained the use of these faculties, should be saved without personal co-operation. Man, accordingly, must co-operate with grace, he must will to be saved, he must agree to it, and intend it. If sanctifying grace is to be imparted to him, through the administration of any of the Sacraments, he must agree to receive this Sacrament, he must *will* to receive it, he must have the *intentio suscipiendi Sacramentum.* This intention, it is true, may be of different kinds, it may be actual, habitual or virtual, and either be had *explicite* or *implicite;* but one of these kinds of intention must be present, just which one is immaterial, for the validity of the Sacrament.

Our patient had had none of these kinds of intention; we are even

aware that he had declared a positive aversion for, and actual opposition to, the reception of the Sacrament of Penance. The peculiar *examination of conscience* and the resulting *Confession* were not calculated to produce a change of mind, and the *contrition* which his better half endeavored to awaken in him was rather doubtful; in fact, under the circumstances, we can hardly suppose or admit of its presence; otherwise the immediate result would have been the desire for a priest, and for the reception of the Sacrament of Penance. At all events the contrition was not such as to offset the deeply inrooted aversion, and therewith fades away the most important ray of hope for reconciliation with heaven of the sick man. The absolution therefore even if given *"sacramentally,"* was totally inefficient and invalid, on account of the *intentio suscipiendi* being absent.

2. The absolution was invalid, because the *materia proxima Sacramenti* was completely lacking. By the *materia proxima* we mean the *materia* which was prescribed by the Council of Trent (Sess. XIV, Cap. III) in the following manner: *Sunt autem quasi materia hujus Sacramenti (Poenitentiae) ipsius poenitenti actus, nempe contritio, confessio et satisfactio.* Whether these *actus poenitentis* are to be understood as *materia proxima intrinseca seu ex qua* or merely as an *extrinseca seu circa quam;* in other words, whether they belong to the essence of the Sacrament, or are merely a *conditio sine qua non,* that we may leave here undecided; it only concerns us that in our case this *materia* was simply not present.

Apart from the very doubtful *integritas materialis,* necessary without question, there was really no *confessio,* properly speaking; for it can not be said that the patient made a sacramental confession of sin, i. e., that he accused himself to a prescribed confessor of all grievous sins committed in order to receive priestly absolution;

he had no idea of the priest's secret presence, nothing was further from his thoughts than to confess and be absolved, and he resisted stubbornly the sacramental Confession. No doubt whatever can prevail upon that score that the patient made no *confessio;* he lacked therefore a most important part of the essential matter, or, at least, the indispensable *conditio sine qua non;* hence the absolution could not possibly take direct effect and the validity of the same can not be thought of.

Furthermore, there was lacking also the *satisfactio sacramentalis;* it was certainly not present *in re*: the confessor could not properly impose such because no *confessio* had taken place, and had the patient upon himself imposed a penance, it would not have been a sacramental penance. The *satisfactio in voto* presupposes a real and sufficient contrition and must *de jure* at least virtually manifest itself to the confessor; otherwise it would not be *materia* or *pars materiae.* Even if we could presume true contrition in our patient, the same did not *de jure* manifest itself to the confessor, and neither consequently a *satisfactio in voto,* even if present. There was, therefore no *confessio* nor *satisfactio.*

The third part of the *materia proxima* is the true contrition which must also *de jure* be manifest to the confessor. It is not impossible, although highly improbable, that the sick man, in consequence of his wife's representations, attained a true contrition, and hence sufficiently disposed in regard to sanctifying grace, but undoubtedly he was not possessed of that particular contrition required for the *materia proxima Sacramenti.* As *materia,* or *pars materiae,* the contrition must absolutely manifest itself exteriorly, of course not *in se*—for that is impossible—but *in alio,* i. e. *in actu et per actum confessionis.* As the patient made no *confessio,* his contrition, even if present as *sufficiens dispositio ad justificationem ex*

opere operato, could not possibly manifest itself to the confessor and for that reason could not serve as *materia,* or *pars materiae.* Thus there are wanting in our patient all the *actus poenitentis,* the *contritio,* the *confessio,* and the *satisfactio;* in short, all of the *materia proxima Sacramenti,* which according to the interpretation of the Scotists is the indispensable *"conditio sine qua non",* and according to the interpretation of the far more numerous body of other theologians a *"pars essentialis ipsius Sacramenti."*

The validity of the absolution in question is, therefore, to be absolutely denied.

LXXII. IMPEDITIO PROLIS.*

This unnatural sin which so greatly desecrates the sacredness of wedlock, unfortunately is becoming more frequent, and is propagating itself by word and print even among those circles where hitherto these vices were unknown. Hence the necessity of discussing this matter. We desire to restrict ourselves to a brief statement of principles without going into the matter too closely.

1. All moralists are unanimous in condemning this sin as one of the most grievous which can be committed in married life; and this applies to every attempt to prevent conception in the cohabitation, be it with or without the use of contrivances. There is the difference to be kept in mind that in the first instance the wife after earnest remonstrance with the husband *suppositis supponendis* may be permissive; in the second instance, with contrivances, this is forbidden absolutely. The use of contrivances rendering any *conceptio* impossible causes the act to be unlawful from the beginning, and therefore *intrinsecus malus*. Co-operation with the same, even if only material, is so intimately allied and so necessary to the sinful act, that it can never be permitted, except in the most extreme case, as some theologians even allow the maiden in the extreme case to escape by purely passive sufferance a threatened death. When, therefore, the Roman Penitentiary decided that a wife be allowed for weighty reasons, and after previous exhortation of the husband, to render the conjugal duty under such conditions, it is always to be understood only in the first sense, as then the act in the beginning is legitimate and becomes an abuse of marriage only through the husband's fault. Indeed, for important reasons, under the same conditions the wife may even claim her conjugal rights; her right is in-

*By W. Stentrup, S.J.

contestable, and with regard to her husband's sin she remains disapproving and purely permissive.

2. We shall now view the matter in its direct relation to the confessor. There are these three possibilities:

(a) A penitent either does not mention the sin at all, or (b) he inquires about its nature and gravity, or (c) he confesses the same as a grievous sin.

(a) If the penitent says nothing in regard to this sin and the confessor has no reason to suspect it, he must not put any questions. If, however, he has reason to believe the penitent enmeshed in this sin, and at that without *bona fides,* it is evident that he is bound in conscience to clear up the case by prudent questioning; otherwise he would seriously fail in his office as judge in the tribunal of Penance. Should he, however, judge the penitent to be in *bona fide,* then the answer of the Sacred Penitentiary of the 10th of March, 1886, may serve as his guide. The question in this instance was asked in order to remove a doubt remaining after a previous answer, and to bring about among confessors a uniformity of procedure. The question was originally put as follows: *Quando adest fundata suspicio poenitentem, qui de onanismo omnino silet, huic crimini esse addictum, num confessario liceat a prudenti et discreta interrogatione abstinere eo, quod praevideat plures a bona fide exturbandos multosque Sacramenta deserturos esse? An non potius teneatur confessarius prudenter ac discrete interrogare? Sacra Poenitentiaria, attento vitium infandum, de quo in casu, late invaluisse, ad proposita dubia respondendum censuit, prout respondet: Regulariter negative ad 1am partem; affirmative ad 2am partem.*

The Sacred Penitentiary prescribes therewith plainly the proper procedure, and states the reason: *attento vitium infandum late invaluisse.*

But we must not overlook the word *"regulariter."* Ordinarily we must follow the given instructions; an exception is however not excluded, and is really *bona fides* present, if the warning promises no result and if the omission of the warning is not likely to have evil consequences, then there applies to this matter what moralists teach in relation to other matters.

(b) If the confessor is consulted about the sin and about its gravity he must give a truthful and clear answer, otherwise he will become accessory to another's sin.

(c) What if the sin is properly confessed? In this connection the following case is brought to our attention: A woman has confessed this sin and to the remonstrance of the confessor she replies: "My husband and I confessed the sin to a missionary and he said nothing about it. My husband's regular confessor likewise never said anything about it, hence we concluded that the matter was not so very serious." What is to be said about the action of these confessors?

In answering this question we return to the above-mentioned reply of the Penitentiary. The matter was again submitted in the following form:

An confessarius, qui sive ex spontanea confessione, sive ex prudenti interrogatione cognoscit, poenitentem esse onanistam, teneatur illum de hujus peccati gravitate aeque ac de aliorum peccatorum mortalium monere, eumque, ut ait Rituale Romanum, paterna caritate reprehendere atque absolutionem tunc solum impertiri, cum sufficientibus signis constet, eundem dolere de praeterito et habere propositum non amplius onanistice agendi. Respondetur: Affirmative juxta doctrinas probatorum auctorum.

Our authorities, it is true, do not demand that the confessor must exhort the penitent in the case of each individual sin properly con-

fessed, and that he assure himself expressly about contrition and resolution in the case of each of them; but they do demand unanimously the truly probable (morally certain) determination of the penitent's disposition. For this reason they require a special treatment of habitual sinners and of relapsers. If in our matter the penitent belongs to one of these classes, which is generally the case, then the confessor must satisfy himself concerning contrition and resolutions in regard to this particular offense. We will not deny that there may be individual cases, in which the confessor is morally certain as to the disposition of the penitent, and fears by citing this special sin, not fully realized by the penitent to be a grievous sin, to shake his good resolution present, and make it doubtful. Prudence will then counsel him to avoid the temptation which a specification of this sin would be for the frail sinner. As a matter of course the penitent must by no means be given the false impression, through the confessor, that his action be no sin, or not a grievous sin.

It often seems to us that if we would take a firmer stand for the law of God, with more confidence and greater apostolic candor, it would be also of great benefit in this matter. Of course we must not impose what is not an actual obligation; but, in an evident violation of the divine commandments, to beat about the bush will give the impression as if it were man's law and not God's law, which paralyzes the authority of God's representatives, and disturbs in the penitent the supernatural idea.

Unfortunately physicians only too often are our opponents in this matter, and by their professional advice they make things exceedingly difficult for us. Then let us tell the penitent: "It is God's commandment; the observing of the same in this case may be hard and a great sacrifice, but God promises grace and heaven 'to those who obey.'" In short: *Suaviter in modo, fortiter in re.*

LXXIII. A SICK PERSON CONVERTED THROUGH HYPNOTIC SUGGESTION.*

In the hospital at X. there was a very sick man, whom the physicians had given up. According to their diagnosis, he had at most only two more days to live. The graveness of the situation had been explained to the patient, but in spite of all the hospital chaplain found himself unable to induce the patient to receive the last Sacraments. He was stubborn and there was no use arguing. The zealous chaplain had just left the room after another vain attempt, made in the presence of the two attending physicians, to convert the unfortunate man. One of the physicians was a clever hypnotist, and had already alleviated our patient's suffering many times by hypnosis. He had just been about to put the patient once more in hypnotic sleep when the chaplain came. Hardly had the latter left the room when the physician approached the sick man's bed and put him gently to sleep. When, however, hypnosis had entered the physician suggested to the sick man, after some soothing thoughts, the firm determination in five minutes after his awakening to have the chaplain called and to receive the last Sacraments, with a sincere and contrite heart. The doctor hastened the procedure and after hardly two minutes he caused the patient to awaken. As usual after a hypnotic sleep, the latter expressed his gratification at the relief from his pains. But not only that. Exactly five minutes after waking he glanced around the room looking for the chaplain, and had him sent for. The latter responded, and the patient asked to receive the last Sacraments. The surprise and inward joy of the good priest may be imagined. Without any trouble the priest attended to the man, and by the following morning the latter had

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journeyed into eternity. What are we to think of this strange conversion? In other words: (1) Did the patient receive the last Sacraments validly? (2) Would the priest have been allowed to administer the Sacraments, if he had been told of the hypnotic character of the process of conversion? (3) Was the physician allowed to hypnotize the sick man and (4) was it proper to suggest the idea of conversion? We will answer these four questions one by one.

1. Did the patient receive the last Sacraments validly, i. e., with profit?

Unfortunately we can not answer this important question unqualifiedly in the affirmative. The objective fact is not clear enough. The chaplain had no idea of the hypnotism that had taken place, nor of the hypnotic suggestion of conversion; he therefore regarded the sick man's conversion as genuine, without examining further into the matter. The physician, however, believed that his suggestion had succeeded; he was pleased to have rendered the patient a good service in this manner, and to have enriched the science of hypnosis by an interesting experiment. He gave no thought to the question of validity of the Sacraments so received. The thought that the attitude of the patient might perhaps be independent of the suggestion of conversion did not enter his mind. Thus it happened that he, neither, examined more closely into the real facts. The sick man, feeble and exhausted, said no more about his "conversion." Had he been asked in his normal condition whether he had become converted and why, or how he came to think of sending for the chaplain, and receiving the last Sacraments, then the true condition of affairs would certainly, or at least in all probability, have been ascertained.

As the case is, there is nothing left for us but to reckon with probabilities, and to say that the patient probably, most probably,

indeed, received the last Sacraments validly, that is to say with profit.

First of all, the suddenness and unexpectedness of the conversion must not be allowed to startle us. A man may be a hardened sinner and reject all priestly assistance, and nevertheless become all at once a ready penitent. God has in His power also the heart of the perverse man, and knows how to lead and stir it in such manner, that against all human expectations, it heeds the divine call to grace, and instantly forsakes the path of sin. Examples of this kind are offered us in the repentant thief upon the cross, St. Paul the apostle, and many other saints.

Against this there arises the justifiable doubt of the validity of the Sacraments as soon as we bring the sudden and unexpected conversion in connection with the preceding hypnotic state and the suggestion "to send for the chaplain five minutes after awakening, and to receive the Sacraments."

It is well-known that hypnotism transports the subject into an irresponsible state of mind; the same holds good for the so-called post-hypnotic hallucinations, i. e., for that state in which the hypnotized person at a fixed time acts upon a suggestion received during the hypnotic state. The physician, on his part, had done everything to produce just such post-hypnotic state, and it looks very much as if with success.

There arises consequently, the question whether the patient *in casu* was of sane mind or not when receiving the Sacraments. If he was, then he received the holy Sacraments validly, and with profit; if he was not, then his conversion was an unconscious exterior act, and an unwilling one, an *actus hominis,* the value of which can not be thought of. It is not impossible that through hypnotic suggestion a man may be brought even against his will to send

for a priest, to request of him the last Sacraments and exteriorly to do everything that the idea suggests virtually and formally. In our patient it is of course remarkable and strange that his actions after the hypnotic sleep corresponded so exactly to the hypnotic suggestion; exactly five minutes after awakening from the hypnotism he caused the chaplain to be called and asked him for the Sacraments. Moreover, it is apparent that the suggested alleviation of pain was really accomplished, for the patient spoke of an alleviation that had taken place. The physician, however, had suggested both, the idea of alleviation and the one of conversion at one and the same time, so that the accomplishment of the one leads us to infer the attainment of the other. Furthermore, as at short terms even apathetic suggestions succeed, as experience proves, and in our case the time was only five minutes, the suggestion of conversion may actually have been considered a success. Besides, the diametrically opposed behavior within a few minutes of the patient in regard to one and the same idea is most plausibly explained by regarding his first attitude as the conscious one; the second, on the contrary, as unconscious, therefore an involuntary and irresponsible one. These are the chief arguments that can be advanced for the patient's unsound state of mind. They are not irrefutable, although we can not deny to them some probability. Let us place against these arguments the evidence that would point to a normal state of mind. First of all, it is very doubtful, and not very probable, that the suggestion of the idea of conversion actually succeeded. It is a fact vouched for by medical science, that a great number even of such subjects as are particularly good "media" are far from being susceptible to all sorts of hypnotic suggestions; for the most part they respond only to sympathetic ideas, i. e., such are agreeable to their tastes, to their sense of honor, to their conscience, or their tempera-

ment. The idea of conversion was extremely distasteful to our patient; he had obstinately resisted it all the time up to about seven minutes ago; he detested it, and would go to perdition rather than subject to it. We may, therefore, suppose that he had not received it at all. The speedy and superficial manner of the suggestion gives support to this argument. Experience teaches that the hypnotist must usually suggest an obnoxious idea repeatedly in order that it may be entertained, two, three, four times; indeed there have been instances where it was necessary to repeat fifty and sixty times before it succeeded. With our patient there was no repetition nor an attempt at special emphasis. Again, there appear as a rule more or less violent signs of reluctance as a result of distasteful suggestion; the subject resists, and struggles against it by word and demeanor, and if the suggestion is further urged, the subject not infrequently falls into fits. There was not the slightest excitement apparent in our patient. He offered no objection, he showed no displeasure. Hence it appears that he remained unresponsive to the idea of conversion, and that he was in no wise moved by it.

The suggestion as such seemed, therefore, unsuccessful; therewith, too, the injurious influence of the suggestion upon the mind was removed, or rather was not present.

Another reason for assuming a normal mind is found in the fact, that the *compliance* with a successful suggestion is completely prevented by a contrary psycho-physiological nature of the subject. The received suggestion operates adequately only when its original relation to the nervous system remains unchanged. With our patient, not even the reception of the suggestion as such can be shown with certainty; still less its efficaciousness.

On the other hand, however, the approach of death was probably not without a special influence upon the nervous system and ideas of

the patient; so that a complete failure of the suggestion may well be supposed. In that case the patient's state of mind was, of course, not at all influenced by the idea suggested.

The efficacy of the simultaneously suggested alleviation of pain does not prove a great deal; it is not even certain that this alleviation was actually to be ascribed to the suggestion; many sick persons feel stronger and better just before death without any suggestion whatsoever. Furthermore, the idea of alleviation is distinctly different from the idea of conversion, and stands in an opposite relation to the patient; he cherishes the one idea, and hates the other; from the success and efficacy of the one does not at all follow the efficacy of the other. The experience of hypnotists confirms this.

Finally, we must remember that hypnotic, or post-hypnotic, hallucinations do not always preclude a conscious state of mind. Even in natural sleep we make a distinction between light and sound sleep, and only in the latter the conscious state of the mind is absent. It is similar in hypnotism, its influence upon the subject's mind stands in proportion to the efficacy of the idea suggested, and this again upon the disposition of the nervous system and the skill of the hypnotist. The fact of positive disobedience, righteous indignation, and open contradiction of many subjects to whom are made silly or unlawful suggestions, proves that subjects have in their hypnotic sleep a flickering of consciousness and hence a momentary sound state of mind; at least those signs of reluctance are not always and solely attributable to the "natural instinct!" Even if we would in the case of our patient acknowledge the success of the suggestion itself and of the working of the suggestion, there will still remain a well-founded doubt as to whether and to what degree consciousness was disturbed.

His action is more easily attributed to a conscious and determined change of will than to post-hypnotic hallucination. To the working of the hypnotic suggestion there were opposed considerably greater difficulties than to a sudden conscious change of mind. In the latter case it only required a *motio congrua* of divine grace to change the will; in the former, a *motio congrua* of the hypnotist, which under the circumstances was hardly possible.

In view of these reasons, speaking for the sound state of mind of our patient, we are justified in saying that the greater probability points to the intrinsic genuineness of the "conversion." It appears therefore to have been a conscious, interiorly willed and freely contemplated act rather than an only apparent and mechanical one. Did however, the sick man in those moments act as a free-willed man, then he in reality has complied with all the conditions required for the validity, i. e., the fruitful reception of the holy Sacraments; he had the intention of receiving the Sacraments; he was sorry for his sins, and confessed them formally; and, therefore, the Sacrament of Penance was validly received and consequently fruitful; the same is to be said of the Holy Viaticum and Extreme Unction, as in regard to them there are offered no other difficulties.

2. Was the chaplain allowed to administer the Sacraments to the patient. had he been aware of the hypnotic suggestion of conversion?

We answer in the affirmative. *Sacramenta propter homines,* say the theologians. One may and must administer those Sacraments absolutely or relatively necessary for man's salvation, to the patient, so long as there is some probability for their valid reception. As we have seen, such a probability was actually present *in casu.* Of course the chaplain properly considering a possible invalidity and consequent danger of irreverence to the holy Sacraments, would

have given absolution conditionally; for *"certum est quod casu quo adest extrema proximi necessitas, et non habeatur materia nisi dubia, tunc minister non solum potest, sed tenetur sub gravi sacramentum ei ministrare sub conditione,"* says St. Alphonsus (Theol. Moral. 1. V. Tr. I. n. 39).

The consideration that the chaplain should not thus participate consciously in a hypnotic experiment, is of little import here. For the chaplain would have participated *in casu* only materially, but not formally, in the hypnotic experiment, as he would not have come on account of the experiment, but in order to save, if possible, the soul of the hypnotized for heaven. Furthermore the deliberate participation in hypnotic experiments can not be condemned as absolutely unseemly or sinful. There are cases where hypnotism is lawful; and in these one may lawfully participate.

3. Was the physician allowed to hypnotize the patient?

This question can not be confirmed unconditionally. Hypnotism has been vehemently combated; it has been condemned as injurious to health, and as unlawful; in this manner it has been presented, for instance, in the *Civilta Cattolica,* 1886, and in P. Franco's, S.J., *L'ipnotismo tornato di moda,* Roma, 1886; on the other hand, however, there have not been wanting earnest and able advocates; as for instance P. Coconnier, O.P., in *L'hypnotisme franc,* Paris, 1898, *XIIme edition.* The supreme ecclesiastical tribunal answered to the question, as to whether life-magnetism be lawful, in a rescript of June 23, 1840, that it is "not forbidden, if all deceit and superstition, expressed or silent invocation of Satan, and immoral aims, are excluded." That which went under the name of life-magnetism in the middle of last century, bears in our days the name of hypnotism. The *Sacred Congregation Inquis.* therefore does not prohibit hypnotism as such. One should compare this with the decision

of the Holy Office, of 28th July, 1847, and the papal encyclical to the bishops, of the 4th August, 1856, also the answer of the Holy Office, of 26th July, 1899, in which it is decreed in reference to a physician taking part in medical application of hypnotism in the case of sick children: *Quoad nova experimenta, si agatur de factis, quae certo naturae viris praetergrediantur, non licere; si vero de hoc dubitetur, praemissa protestatione, nullam partem habere velle in pactis praeternaturalibus, tolerandum, modo absit periculum scandali.*

It must be conceded that in hypnotism very remarkable and strange phenomena appear, but all these are by no means a criterion of diabolical influence. Calm research and psycho-physiological science have an explanation in a purely natural way of most hypnotical phenomena hitherto known. The susceptibility of the nervous system for exterior influences, and the close alliance of soul and body, form a sphere in which the ability of the hypnotist is enabled to work amazing things, without in any manner needing the co-operation of spirits.

Unfortunately it is true, that hypnotism has many times injured the health of subjects, either through the weakening of the memory, of the reason, or of the will power, or by producing diseased conditions. The culpability for these lamentable conditions, however, rests almost always upon the imprudence and awkwardness of the hypnotist who hypnotizes persons without proper regard to their psychical and somatical condition. If hypnotists would set to work more cautiously and conscientiously, and if they would not put the subjects in sleep too often nor too long, if they would not vex them with distasteful suggestions, then the evil after effects would either altogether cease or at least grow perceptibly less. At any rate injury to health is not necessarily a result of hypnotism and it has not been proven that hypnotism as such is detrimental to health.

Although it may be advisable to be somewhat skeptical in accepting the triumphal reports of the advocates of hypnotism, yet it can not be denied that hypnotism has secured a prominent place in the medical science. It is claimed that much good has been already done with its aid and that it has either removed, or at least alleviated diseased conditions. It is argued that it would be unjust to condemn it as the sworn enemy of the human race, and to banish it from off the earth. Still, this commendation of hypnotism must be greatly modified. The injuries which hypnotism works or may work are so numerous and so great, that from the standpoint of common sense alone, it must be designated as unlawful and improper.

It is easily understood why the medical faculty of Vienna, the health boards of Milan, and of Rome, the College of Medicine at Brussels, the international Congress for experimental and therapeutical hypnotism at Paris (1889) and others, recommended to their respective governments the prohibition of public demonstrations of hypnotism, which was usually done. And it would be proper, too, if so-called scientific application of hypnotism would be entirely forbidden. Exception might be made in cases where hypnotism is employed for healing purposes, and this only on the following conditions: (1) That no other remedy was known or available; (2) That the probable harm would be exceeded by the benefit to be gained; (3) That it be applied by an experienced and conscientious physician, precluding all risk and misuse; (4) That the patient agree to it. Such case will not easily present itself. For this reason the use of hypnotism is mostly considered by the authorities as unlawful (cf. Ballerini-Palmieri, Villada, Bucceroni, Aertnys, Cl. Marc, etc.); while others permit its use as a specific under the restrictions as above-mentioned (cf. Lehmkuhl, D'Annibale, Ojetti, after D'Annibale and Lapponi, Noldin).

The person who lets himself or herself be hypnotized, surrenders to the will of the hypnotist for the term of the hypnotic sleep and the latter may do as he pleases with the subject; it is also unlawful to renounce reason and free will as done in hypnotism. These are the chief arguments against hypnotism besides those dealt with above. When reading the accounts of what hypnotists have attempted with sleeping subjects, one is inclined to pray, "From the evil of hypnotism deliver us." Revolting abuses have been perpetrated in this particular. This is not the place to go into details; we refer to the authors above quoted.

The answer to the third question is thus given and supported by facts.

If the doctor had really put the patient in hypnotic state it remains to answer the last question:

4. Was the physician allowed to suggest conversion to the patient?

The physician could not know whether the suggestion of conversion would produce harmful excitement of the nervous system in our patient, and thereby an aggravated condition. He went to work with all necessary caution and gentleness, and he did not worry the sick man by repeating the suggestion. It was permissible to venture something in this case, for the salvation of the patient's soul was of more importance than his somatic condition.

Nor was consideration of the doubt of validity of the Sacraments an obstacle; for the suggestion of conversion did not surely cause invalid reception, it did not even contain an absolute danger to the validity; moreover the Church has not yet prohibited suggestions of this kind. The physician's action can thus be approved of; he was allowed to suggest to the patient in a hypnotic state, Five minutes after awakening from the hypnotic sleep to call for the chaplain and ask him for the last Sacraments.

LXXIV. AN EXPLANATION OF THE WORDS: "NEMO IN UTERO MATRIS CLAUSUS BAPTIZARI DEBET."*

In the Roman Ritual we find among the instructions preceding the baptismal rite (tit. II. cap. I. n. 16), the direction: *Nemo in utero matris clausus baptizari debet.* This sentence may attract notice, as it appears to contradict that which now is universally taught in moral and pastoral theology.

There may be asked two questions, viz.: 1. Is it allowed, or even an obligation, to baptize an infant still in the mother's womb, if otherwise there is danger of the infant dying without Baptism? And presuming that by such Baptism the *applicatio materiae* was possible, and that also the *forma* was correctly used, the second question would be: Is such Baptism valid?

It is universally taught at present, in regard to the first question, that it is allowed, and even obligatory, in a case of necessity to baptize the infant in the mother's womb. The second question Gury answers: (*Theol. Mor. pars* II. n. 239): *Affirmative probabilius, si puer attingatur aqua in utero matris medio aliquo instrumento, quia talis infans, cum existat iam homo viator, valide potest baptizari.* Considering the matter theoretically, I think a more positive statement should be made as follows: Such Baptism is without doubt valid, provided the *applicatio materiae* properly took place. For with this provision I see no reason why the validity of the Baptism can be at all doubtful. *"Subjectum enim baptismi est omnis homo viator nondum baptizatus."* In these cases, however, it will generally remain somewhat uncertain whether the *applicatio materiae* properly took place, and for this reason already there would *pro praxi* be advisable a conditional repetition of the Baptism if

*By J. Rieder, D.D.

the infant subsequently be born alive. This is indeed decreed by a decision of the Sacred Congregation, of the 12th July, 1794, in which the conditional repetition of a Baptism administered in the womb is ordained in these words: *Foetus in utero supra verticem baptizatus, post ortum denuo sub conditione baptizetur.*

If, however, the conditional repetition of the Baptism would be argued by appeal to the sentence: *Qui natus non est, non potest renasci,* i. e., in order that one may be re-born, he must first of all be born, we can not agree with this argument for intrinsic reasons, and we will show below how this sentence, frequently met with in ancient writers, has frequently been misunderstood.

With a clearness and precision all his own, Lehmkuhl thus expresses himself (Theol. Mor. II. 74): *Vix dubitari potest de valore baptismi infanti in utero matris collati, si infantis caput a secundina omnino solutum sive medio instrumenti sive aliter aqua tingi potuerit. Attamen non desunt, qui putent, primo hominem debere membrum separatum externae societatis humanae esse, quam baptizari possit. Quapropter, etsi theoretice considerata ratio dubitandi de valore baptismi vix ulla suppetat; tamen quia S. C. C. 12 Julii, 1794, in Sutrina, baptismum illum sub conditione iterandum dixit, qui infanti tali modo collatus erat, Sanctae Congregationis auctoritas nos prohibet, quominus omnino certum ejusmodi baptismum statuamus. Ergo in periculo omnino ita conferendus est, sed postea, si infans vivus ex utero prodierit, sub conditione est repetendus.*

Similarly, but more pointedly, is the matter put by the *Analecta Ecclesiastica* (of April, 1896): *Receptum, sane apud omnes est, posse instante partu infantem, in utero matris licet omnino latentem, cum debita materiae et formae applicatione baptizari, nihilque vel ex Scripturis vel ex Traditione proferri, quod talem baptismum inefficacem, vel probabiliter quidem, demonstret.* There is, therefore,

no doubt whatever in regard to the validity of such Baptism in itself. Before going further, we wish to comment on the words of Lehmkuhl: "*Si infantis caput a secundina* (membrane or caul) *omnino solutum . . . aqua tingi potuerit.*" In order to speak of the validity without doubt of such Baptism, this condition is under all circumstances required and indispensable. Gury, it is true, holds (l. c.): *Nec obstat illud quod puer adhuc involutus sit in secundina, quia haec est veluti pars infantis,* and considers, therefore, the Baptism even *probabilius* valid, in case the infant is still enclosed in this caul. But here we must give ear to the physicians. The very reliable Dr. Capellmann (Pastoral Medicine, p. 139); protests against this view of Gury's, by reason of the results of the history of development. "The caul," he says, "is not at all in its totality a *pars infantis.* The caul consists, until birth, of three plainly distinguishable, even separable, teguments. The two inner teguments, the amnion and chorion, may be considered part of the infantile body, inasmuch as they are produced by the embryo itself. The outside tegument, however, the so-called *decidua,* originates from the mucus of the womb (*uterus*), and therefore belongs to the mother's body; and can not be regarded at all as *pars infantis.* It follows that the Baptism of an infant enveloped in this caul or veil can only be of very doubtful validity."

If, however, it will be asked, Baptism in such cases, according to the teaching of theologians, can and must be administered *puero in utero matris,* and if no doubt can exist as to the validity of the Baptism itself, what meaning can be attributed to the words of the Rituale: *Nemo in utero matris clausus baptizari debet?*

In order to give a satisfactory answer, we shall have to view the question from the historical standpoint.

In the above discussion we have only learned the present teaching

of theologians, but it must be mentioned that to the question *utrum puer in utero matris clausus* could be baptized, the ancient writers gave an answer entirely different. From the time of Petrus Lombardus to that of Gabriel Biel (+1495) they all answered this question with one accord—negatively. They do so with recourse to St. Augustine, and to the part of the *Corpus Iuris* (cap. *Qui maternis dist.* 4 *de Consecratione*), which says: *"Quia qui natus secundum Adam non est, secundum Christum regenerari non potest. Inde regula: Qui natus non est, non potest renasci."*

Let us select from the number of these writers the Angelic Doctor, St. Thomas. He deals with our question in the third part of his *Summa* (*quaest.* 68 *art.* 11). under the head *Utrum pueri in maternis uteris positi sint baptizandi?*

First of all he states, in accordance with his method, some reasons which appear to favor the administration of such Baptism; for instance, that the grace of Christ must be more efficacious than sin, and since these infants are stained with original sin, therefore it seems there must be a possibility of imparting to them the grace of Christ, by Baptism. Furthermore, it seems that such infant is part of the mother; that if, therefore, one baptized the mother, all that within her would be simultaneously baptized. Contrary to this view, St. Thomas goes on to say, is what St. Augustine wrote in his letter to Dardanus: *"Nemo renascitur, nisi primo nascatur." Sed baptismus est quaedam spiritualis regeneratio. Non ergo debet aliquis baptizari, priusquam ex utero nascatur;* and the *conclusio* reads: *Cum infantis in utero materno existentis corpus aqua ablui non potest, patet non posse in materno utero infantem baptizari.* Entering into the merit of the question itself, St. Thomas then adds: *Respondeo dicendum, quod de necessitate baptismi est quod corpus baptizandi aliquo modo aqua abluatur, cum baptismus sit quaedam abutio. Cor-*

pus autem infantis, antequam nascatur ex utero, non potest aliquo modo ablui aqua; nisi forte dicatur, quod ablutio baptismalis, qua corpus matris lavatur, ad filium in ventre existentem perveniat. Sed hoc esse non potest, tum quia anima pueri, ad cuius sanctificationem ordinatur baptismus, distincta est ab anima matris; tum quia corpus pueri animati iam est formatum et per consequens a corpore matris distinctum et ideo baptismus, quo mater baptizatur, non redundat in prolem in utero matris existentem. Unde Augustinus . . . . Et ita relinquitur, quod nullo modo infantes in maternis uteris existentes baptizari possunt.

Thus St. Thomas, and with him agree the theologians of the following centuries; even Billuart (+1757) remarks to this: *Probabilius videtur, in casu posito infantem nec licite nec valide posse baptizari. Est sententia omnium antiquorum et ex recentioribus auct.* Habert, Gotti, Tournely, Berti, etc., *contra quosdam alios recentiores.*

It will not escape the reader's attention that St. Thomas and the other ancient theologians viewed this question differently from St. Augustine; Thomas and the others considered it impossible that the *materia baptismi* could be applied to an infant in the mother's womb. It always occurred to them, that because of the inability to reach the infant, the mother would again be baptized with the intention of thereby imparting the grace of the Sacrament to the infant, and this they considered perfectly inoperative. Hence their dictum that infants in the mother's womb can neither be lawfully nor validly baptized. Progress in medical science on the one hand and experience on the other has taught us, that it is quite possible, especially *instante partu,* and not even difficult, to apply the water of regeneration to infants in the mother's womb, and consequently the answer to our question has become a different one.

For the first time this more recent view of the case is met with in

Biel's writings, who says: *Dicendum breviter, quod in utero matris puer non potest baptizari, quia in utero matris non potest lavari nec contingi. . . . Si vero, ut aliquibus placet, puer adhuc latens in utero matris, quamvis matri coniunctus, aqua corpus eius contingente, ablueretur vel abstergeretur debita intentione et forma, vere puer baptizaretur et salvaretur.* (In IV. dist. IV. q. 2 art. 3 dub. 2.)

Similarly Diana and Laymann express themselves. In the middle of the seventeenth century Pignatelli wrote, at Rome, in this sense, and he stated that the Cardinal Vicar caused a thorough examination of the *obstetrices,* to ascertain if and how in these cases the *applicatio materiae* was possible. As a result of this examination the Cardinal Vicar adopted this new view and put it into practice. P. Qualdus defends this opinion most strongly and elaborately in his work which appeared at Padua in 1710. In an interesting and lucid manner Benedict XIV treats our question in his work *De Synodo Diocesana* (bib. VII. cap. 5). There is no doubt whatever, he first remarks, that an infant can not be baptized in the mother's womb, if it is impossible to apply the water, and it would be heretical to hold that the infant would participate in the Sacrament, when administered to the mother in its stead, as already explained by St. Augustine (lib. 6 *Contra Julianum* c. 5), and as St. Thomas also teaches. But the question, the learned Pope continues, is a different one; it is: *An reserato materni uteri ostio, quod puerperii initio contingit, valide baptizetur infans, cuius corpusculum, etsi nulla sui parte in lucem prodierit, aqua nihilominus saltem per siphunculum tingi potest.* It is quite remarkable, he states, how theologians differ on this subject, and he names those who are *pro,* as well as those who are *contra.* He himself sides with those who are *pro tali baptismo* and refutes the opponent's arguments. No final decision

having been rendered by the Church he considers it the duty of pastors, for this reason, to instruct the midwives, that in such cases they should baptize conditionally, and likewise that in the event of the infant being born alive baptism should be conditionally repeated.

The opponents of the lawfulness and validity of such Baptism support their argument by two reasons. Firstly, they say, it is not possible to apply the *materia Sacramenti,* and secondly they quote the words of Christ: *Nisi quis renatus fuerit denuo* (John iii) and deduce therefrom with recurrence to St. Augustine and the *Corpus Iuris,* that man must first be born before he can be regenerated by water and the Holy Ghost.

As far as the first reason is concerned, that is settled by the opinion and experience of the physicians. In regard to the second reason, St. Augustine, to be sure, repeatedly advances this argument, but, as Benedict XIV says, the context plainly shows that the holy doctor intended only to show the uselessness and invalidity of a Baptism administered to the mother and intended for the infant.

This is the purpose and the meaning of the passage of the Gratian Decree. This is also exactly the case with St. Thomas who, as shown by the quoted words, only answers in the negative sense because he considered it impossible that the infant could be reached with water. The passage in St. John (c. iii) finally must be taken and understood in its logical sense, and an exegesis, in which the words are taken literally, has no value. How far from the intention of the Church herself is such a narrow exegesis, may be seen by her action in presenting to our veneration, on the 31st August, a saint with the surname *Nonnatus.* We read in the Breviary also of St. Aloysius *prius coelo quam terrae nasci visus.* Should this not suffice, we might, as Benedict XIV (l. c.) writes, with a certain right consider him as *natus, qui ex abditioribus maternae alvi penetralibus*

ad uteri ostium decidit et obstetricis manibus pertractatur." Indeed the Church herself ordains (Rituale R. lit. II. c. 1, 16): *Si infans caput emiserit et periculum mortis immineat, baptizetur in capite, nec postea si vivus evaserit, erit iterum baptizandus.* In this case, too, the *nativitas* has not taken place completely, and yet it is not required that this Baptism be repeated, not even conditionally.

We believe we have proved that appeal can be made neither to the Holy Scriptures, nor to tradition, nor to the teaching of the Church, in order to argue for the unlawfulness and invalidity of the Baptism *in utero matris;* on the contrary, *Puer adhuc in matris utero existens, urgente necessitate, licite et valide potest baptizari; debet tamen iterum baptizari sub conditione, si vivus in lucem prodierit; hoc fluere videtur ex responso S. Congregationis de dato* 12 *Julii* 1794. We say "*fluere videtur,*" for this decision of the Congregation though a precedent for judging similar cases, is not a strict universal law, it was applied to an individual case and even if the physician asserted that he most certainly sprinkled the infant's head with water, it may still be thought that the Congregation did not place implicit belief in this assertion, and for this reason ordained the conditional repetition of the Baptism. If, therefore, some one should not take this answer of the Congregation to be a general strict command to repeat the Baptism in every case, he would not appear to be altogether without reason. There seems to result from the decision quoted the fact that in every such case Baptism may be repeated conditionally. And it will be the safe way to do it in every case.

We return at last to our question: What do the words of the Rituale mean: *Nemo utero matris clausus baptizari debet,* what is the sense of these words? It appears that these words should be supplemented by the apposition: *absque necessitate,* and the meaning

would be: As a general rule it is prohibited to baptize an infant in the mother's womb, except in case where there exists danger that the infant will not be born alive, and would, therefore, die without Baptism. Yet this explanation does not seem to fit very well, for in the same chapter of the Rituale such emergency and extraordinary cases are already discussed.

Hence we believe these words of the Rituale are to be taken in the meaning of the ancient writers so that they may be paraphrased somewhat in the manner following: *Nemo in utero matris clausus baptizari debet, quia infans ita in utero latitans, ut nulla eius pars aqua tingi queat, baptizari nullo modo potest neque aliquid infanti prodesset, si eius loco matris corpus ablueretur.*

The Code in Canon 746 has cleared up this matter as far as possible. In the first place it repeats the words of the Roman Ritual: *Nemo in utero matris clausus baptizetur,* but it adds immediately, "as long as there is probable hope that the child can be baptized after delivery." If, therefore, that hope vanishes, the child can be baptized in the womb of the mother; but the same Canon demands that after delivery the child be again baptized conditionally. If the head appears and there is danger of death of the child, it should be baptized, and it is not to be baptized again if after complete delivery the child lives. If any other part of the body first appears and there is danger of death before complete delivery, the child is to be baptized on that part of the body, but after delivery it must be baptized again conditionally.

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